LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
JUL 11 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. 75-64

GRINDLAY'S BANK (UGANDA) LIMITED,
Petitioner,

v.

J. ZEEVI AND SONS, LTD., GAD ZEEVI, RIVKA ZEEVI, GALILLIA PAGI and ENIA MELZNER, copartners doing business as J. ZEEVI & SONS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK

HENRY HARFIELD
Attorney for Petitioner
53 Wall Street
New York, N. Y. 10005

SHEARMAN & STERLING
HERMAN E. COMPTER
JOHN J. E. MARKHAM, II
of Counsel

July 10, 1975.

TABLE OF CONTENTS

	PAGE
Citations to Opinions Below	1
Jurisdiction	2
Questions Presented	2
Constitutional Provisions, Treaty and Statutes Involved	4
Statement	4
Time and Manner in Which Federal Questions Were Raised	9
Reasons for Granting the Writ	10
I. The State Court Decided Substantial Federal Questions That Should Be Determined Only By This Court	12
A. The State Court Was Not Authorized to Adjudicate This Case	12
B. In This Case the Use of Judicial Action to Implement State Policy is Offensive to the Constitution of the United States	17
II. The State Court Decided Substantial Federal Questions In a Way Not in Accord With Applicable Decisions of This Court	18
A. Due Process Requires that Ugandan and Not New York Law Be Applied	19
B. Under the Federal Act of State Doctrine Petitioner's Compliance with the Directives of the Ugandan Government Constitutes a Complete Defense	21
C. The Judgment of the State Court Violates a Treaty of the United States	25
Conclusion	29

INDEX TO APPENDIX

PAGE

Opinion of the Court of Appeals, State of New York A1

Order, Judgment and Remittitur of the Court of Appeals A10

Entry of Judgment Upon Remittitur A13

Memorandum Opinion of Trial Court, New York County A15

Memorandum Opinion of Trial Court, New York County A17

Constitutional Provisions, Treaty and Statutes Involved A23

Letter Request to Open a Letter of Credit A26

Application for Credit 110/84 ..... A27

Letter of Credit 110/84 ..... A29

Letter of Collection From Chemical Bank to First National City Bank A31

Letter from First National City Bank to Chemical Bank A33

TABLE OF CASES AND AUTHORITIES

Cases: PAGE

American Banana Co. v. *United Fruit Co.*, 213 U.S. 346 (1909) 22

Auten v. *Auten*, 308 N.Y. 155 (1954) 19

Banco do Brasil v. *Israel Com. Co.*, 12 N.Y.2d 371 (1963), *cert. denied*, 376 U.S. 906 (1964) 23, 26

Banco Nacional de Cuba v. *Sabbatino*, 376 U.S. 398 (1964) 22

Bank of America v. *Whitney Bank*, 261 U.S. 171 (1923) 14

Burt Randolf Sugar and Wrestling, Inc. v. *Curtis Circulation Co.*, 377 F.Supp. 1055 (S.D.N.Y. 1975) 16

Deutsche Bank v. *Humphrey*, 272 U.S. 517 (1926) ... 21

Erb v. *Banco di Napoli*, 243 N.Y. 45, 49 (1926) 15

Fuentes v. *Shevin*, 407 U.S. 67 (1972) 16

Hanson v. *Denckla*, 357 U.S. 235 (1958) 13, 15

Harris v. *Balk*, 198 U.S. 215 (1905) 15

Home Insurance Co. v. *Dick*, 281 U.S. 397 (1930) 20

Huntington v. *Attrill*, 146 U.S. 657 (1892) 24

International Shoe Co. v. *Washington*, 326 U.S. 310 (1945) 13, 15

Kolovrat v. *Oregon*, 366 U.S. 187 (1961) 28

Lauritzen v. *Larsen*, 345 U.S. 561, 590-91 (1953) 20

McGee v. *International Life Ins. Co.*, 355 U.S. 220 (1957) 13, 15

Menendez v. *Saks & Co.*, 485 F.2d 1355 (2nd Cir. 1973) 24, 25

PAGE

Mertz v. *Mertz*, 271 N.Y. 466 (1936) 24

North Georgia Finishing, Inc. v. *Di-Chem, Inc.*, No. 73-1121 (1975) 16

Oetjen v. *Central Leather Co.*, 246 U.S. 297 (1918) .. 21

Salimoff & Co. v. *Standard Oil Co.*, 262 N.Y. 220 (1933) 22

Simonson v. *International Bank*, 14 N.Y.2d 28 (1964) 15

Underhill v. *Hernandez*, 168 U.S. 250 (1897) 21, 22

United States v. *Ansonia Brass & Copper Co.*, 218 U.S. 452 (1910) 27

United States v. *Belmont*, 301 U.S. 324 (1937) 17, 28

United States v. *Pink*, 315 U.S. 203 (1942) 17, 27, 28

Vladikavkazsky Railway Co. v. *New York Trust Co.*, 263 N.Y. 369 (1934) 24

Constitutional Provisions:

United States Const. Article I, cl. 2 .....11, 27

United States Const. Amend. XIV 10, 11, 13, 16, 19

Statute:

Bretton Woods Agreement (60 Stat. 1401 *et seq.*) ..11, 25, 26, 27

Addresses:

State of the Union Address, by the President of the United States (H. Doc. R's 94-3) 121 Cong. Rec. No. 2 (Jan. 15, 1975) 18

Miscellaneous:

Nussbaum, Exchange Control and the International Monetary Fund, 59 Yale L. J. 421 (1950) 26

IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. .....

GRINDLAY'S BANK (UGANDA) LIMITED,

Petitioner,

v.

J. ZEEVI AND SONS, LTD., GAD ZEEVI, RIVKA ZEEVI, GALILLIA PAGI and ENIA MELZNER, copartners doing business as J. ZEEVI & SONS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK

Petitioner prays that a writ of certiorari issue to review the order and judgment of the Court of Appeals for the State of New York entered in the above entitled action on June 16, 1975 which affirmed a final order and judgment of the Supreme Court, New York County, granting judgment to the respondents upon their first alleged cause of action.

Citations to Opinions Below

The opinion of the Court of Appeals (A 1-9)[1] of the State of New York, affirming, is, as yet, not officially re-

[1] Numbers in parentheses prefixed by the letter "A" refer to pages of the appendix to this petition. Numbers in parentheses prefixed by the letter "R" refer to pages of the record in the state court.

ported. The two memorandum opinions of the Trial Court, Supreme Court, New York County (A 12-19) are not officially reported. The two orders of the Appellate Division, First Judicial Department, affirming, without opinion, are reported at 42 A.D.2d 693 (1974) and 44 A.D.2d 914, 355 N.Y.S. 2d 1015 (1974).

Jurisdiction

The order and judgment of the Court of Appeals for the State of New York (A 10-12) was entered on June 16, 1975. On June 26, 1975, upon remittitur from the Court of Appeals, the Supreme Court, New York County, entered final judgment (A 13-14). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

Questions Presented

1. In the context of our federal system, in which the conduct of foreign affairs is the function of the federal government, may a state court declare, and by judicial action execute, what it conceives to be the political, social and economic policies of the state by undertaking to adjudicate controversies (a) between alien litigants, none of whom are citizens, residents or domiciliaries of the state, and (b) arising out of business transactions occurring outside the United States and having no impact on the state?

2. Under the Constitution of the United States, is a state court authorized to adjudicate a controversy between litigants who are citizens of foreign countries and are neither resident nor otherwise present within the state, for the purpose of enforcing a contract that is unenforceable in the foreign country where it was made and to be performed by reason of laws and governmental acts of such foreign country which the state court believes to be confiscatory, ethnically discriminatory and repugnant to state policy?

3. When a state court lacks subject matter jurisdiction of a controversy arising out of a contract made and to be performed in a foreign country by citizens of foreign countries not resident or otherwise present in the state, does the state court nevertheless have jurisdiction because of the existence of a collateral offer of a unilateral contract, made generally to banks not parties to the action and never accepted, but which would have been performable in the state?

4. May a state court, without prior notice or hearing, seize a bank account, maintained within the state by a citizen of a foreign country who is not resident or otherwise present in the state, in order to enforce, for the benefit of a plaintiff who is neither a citizen nor resident of the state, a contract that is unenforceable in the foreign country where it was made and to be performed?

5. In an action in a state court, between foreign nationals who are neither citizens nor residents of the state, arising out of a contract made and to be performed in a foreign country and unenforceable under the laws of such country, is it a denial of due process of law for the state court to enlarge the liability of the non-resident foreign defendant by applying the substantive law of the forum state instead of the law of the country where the contract was made and to be performed?

6. Are the courts of the State of New York precluded, by reason of the Bretton Woods Agreement, 60 Stat. 1401 *et seq.*, and by Article VI, Clause 2, of the United States Constitution, from enforcing an exchange contract which violates the exchange control regulations of the Republic of Uganda, a signatory nation to the Bretton Woods Agreement?

7. Was the decision of the state court contrary to the act of state doctrine as enunciated in prior decisions of this Court?

Constitutional Provisions, Treaty and Statutes Involved

The constitutional provisions, treaty and statutes involved are Article VI, Clause 2, of the United States Constitution, the fourteenth amendment to the United States Constitution, the Bretton Woods Agreement, 60 Stat. 1401 *et seq.*, New York Business Corporation Law § 1314(b) (McKinney's 1971) and the New York Banking Law § 200-a(2) (McKinney's 1971) which are set out at pages A 23-25 of the Appendix to this petition.

Statement

This petition seeks review of action by the New York courts which, under the guise of enforcing a foreign contract that is unenforceable where it was made and to be performed, encroached upon the federal prerogative of conducting foreign affairs by declaring and executing what the courts conceived to be a proper political, social and economic policy.

The action is brought by respondents, Israeli business entities, against petitioner, a banking corporation organized and existing under the laws of Uganda, for anticipatory breach of a letter of credit contract. The parties are non-resident aliens of the United States. Neither party is found within or does business in the United States, nor in New York, which is the forum chosen by respondents.

The action was commenced, without prior notice or hearing, by attachment of a bank account maintained by petitioner with a national banking association located in New York City. The complaint alleges, *inter alia,* that petitioner's breach was the result of "a new government-inaugurated and directed policy on forfeiture of foreign-held assets and property and a new policy of active anti-Semitism embarked upon by the government of Uganda"

(R. 24). Annexed to and made a part of the complaint are inflammatory newspaper accounts and magazine articles that were calculated to be, and were, prejudicial to petitioner and destructive of its right to a fair hearing.

The uncontroverted facts, as they appear in the record, emerge in the following chronology.

On or about March 24, 1972, Hiram Zeevi and Co. (Uganda) Ltd., an affiliate of respondents, located and doing business in Uganda, made a written request to petitioner to issue an irrevocable letter of credit in favor of respondents in Israel (A 26-27; R. 163). The request specified the terms upon which funds (denominated in U. S. dollars) were to be available to respondents. Pursuant to that request, and in consideration of a security deposit in Uganda in Ugandan currency equivalent at that time to the United States dollars to be available under the credit, petitioner issued its irrevocable letter of credit, No. 110/84 (A 26-27; R. 54).

The terms of that credit, as specified by Hiram Zeevi and Co. (Uganda) Ltd., were that petitioner guaranteed to respondents payments of ten drafts, in the aggregate amount of U.S. $406,846.80, each draft to be in the amount of U.S. $40,684.68, to be drawn by respondents on M/s Hiram Zeevi and Co. (Uganda) Ltd., P. O. Box 719, Kampala, Uganda, payable upon presentation in Kampala, Uganda, the first such draft being payable on April 15, 1972, and the remainder being payable on the fifteenth day of successive months. The expiration date was stated as follows: "This credit is valid until 31st January, 1973 for presentation of drafts in Kampala" (A 30; R. 54).

In addition to petitioner's engagement to respondents, petitioner undertook gratuitously, as a matter of international banking practice and not at the instance of respondents or their Ugandan affiliate, to provide a reimbursement facility for any bank that might elect to purchase drafts drawn under the letter of credit. That offer to negotiating banks, not bargained for by the applicant for the credit,

was contained under the rubric "Special Instructions", in the following terms:[2]

> "The negotiating bank is authorized to claim reimbursement for their payments on the due dates listed above from First National City Bank, 399 Park Avenue, New York, to the debit of our account with them together with a certificate to the effect that all terms of the credit have been complied with and the relative drafts have been airmailed to us." (A 30; R. 54-55)

The purpose and effect of the foregoing commitment was to enable a negotiating bank (which is a bank that discounts, by purchasing, drafts drawn by the beneficiary of a credit) to claim reimbursement for the amount of its outlays; it did not have the effect of enabling the beneficiary itself (respondents) to present drafts in New York and be paid there[3] (R. 158, 168).

The letter of credit (No. 110/84) was issued and to be performed in, and subject to, the laws of Uganda; all obligations of petitioners to respondents were undertaken in and performable exclusively in Uganda.[4] (R. 158).

---

[2] The statement by the state court that the provision for reimbursement of a negotiating bank "was an integral part of that for which the parties bargained" (A 5) is plainly contradicted by the record. The application for the letter of credit makes no mention of, or request for, any reimbursement facility in New York or elsewhere (A 27-28).

[3] The statement by the state court (A 5) that New York was the "site of payment" of drafts drawn by respondents under the credit is plainly contradicted by the record. The letter of credit at issue expressly provides for payment in Uganda not in New York (A 29-30).

[4] Credit No. 110/84 obligated petitioner to see that respondents' drafts were paid upon presentation in Uganda. The state court's conclusion (A 5) that petitioner's order countermanding payment of claims by a negotiating bank "gave rise to a cause of action" in New York is plainly incorrect. It should be noted that no drafts purporting to be drawn, or other claims, by a negotiating bank have ever been presented, nor has any claim of a "negotiation" ever been made by any bank.

On or about April 17, 1972, pursuant to mandate of the Ugandan government, petitioner was required to and did cancel its letter of credit No. 110/84; and it so advised respondents, the advising bank in Haifa, Israel, and First National City Bank in New York (R. 36, 172).

On or about November 24, 1972, at the instance of respondents, the Sheriff of the City of New York attached in excess of $700,000 standing to the credit of petitioner with First National City Bank of New York, pursuant to an order of attachment issued by the Supreme Court of the State of New York (R. 14-15) upon affidavits (R. 16-18) and a summons and complaint (R. 19-28) filed by respondents without prior notice to or opportunity for hearing by petitioners. The complaint was based upon an alleged anticipatory breach by petitioner of the contract embodied in its letter of credit No. 110/84 (R. 19-28). The complaint set forth a second alleged cause of action based upon anticipatory breach of an alleged letter of credit No. 110/85; that claim has been severed and is not involved in this petition.

Service of the summons and complaint was purportedly effected by mail and publication, the only way service could be made, as petitioner was not present, nor doing business in New York.

Subsequent to the attachment, on or about December 5, 1972, respondents presented to petitioner, in Kampala, Uganda, ten drafts purporting to be drawn under and in accordance with the terms of credit No. 110/84. Said drafts were transmitted by respondents to Kampala through Chemical Bank, of New York City, which acted as collection agent (R. 56). The drafts were dishonored in Kampala, Uganda, upon presentation there on December 18, 1972, and were returned to the collection agent (R. 56). On December 28, 1972, more than a month after the attachment, and again on January 11, 1973, Chemical Bank presented said drafts to First National City Bank, in New York, as a collection item, and said drafts were returned

unpaid on the ground, *inter alia*, that First National City Bank, as a reimbursing bank, was authorized only to pay a negotiating bank that had certified that the terms of the credit had been complied with; First National City Bank was not authorized to pay drafts presented on behalf of the beneficiary of the credit (respondents) (R. 56, 58, 168-170).

On or about January 19, 1973, petitioner timely moved to dismiss the action and to vacate the attachment for lack of subject matter jurisdiction pursuant to New York Business Corporation Law § 1314(b). By order entered April 11, 1973, the Supreme Court, New York County, denied that motion. On appeal to the Appellate Division of the Supreme Court, First Judicial Department, that order was affirmed without opinion and as the order did not finally dispose of the action, no further appeal was available.

Petitioner thereafter served an answer and an amended answer, raising the federal questions herein sought to be reviewed.

On August 29, 1973, respondents moved for summary judgment on the first claim, based upon letter of credit No. 110/84. Petitioner cross-moved, on October 10, 1973, for summary judgment on both the first and second claims. The Supreme Court, New York County, by order entered February 7, 1973, granted summary judgment to respondents on the first claim and severed the second claim. Respondent J. Zeevi and Sons, Ltd. was awarded judgment against petitioner in the amount of $443,921.28 by judgment entered in the New York County Clerk's office on February 19, 1974. The order and judgment were affirmed by the Appellate Division, First Judicial Department, without opinion, and by the Court of Appeals for the State of New York.

The opinion of the Court of Appeals (A 1) explicitly answered, adversely to petitioner, the federal questions

raised by the defenses; namely, that the assumption of jurisdiction violated constitutional guaranties; that the application of New York law to enforce a contract unenforceable under the law of the foreign country where the contract was made and to be performed denied petitioner due process of law; that the federal act of state doctrine prohibits adjudication by the courts of New York; and that the contract in suit is unenforceable under a treaty of the United States.

Execution of judgment was stayed by the Chief Judge (Breitel) of the Court of Appeals for a period of ninety days to permit petitioner to seek the relief hereby requested from this Court.

Time and Manner in Which Federal Questions Were Raised

In its amended answer, petitioner explicitly reserved the question as to the jurisdiction of the state court, first raised by its motion to dismiss the complaint and vacate the attachment. It asserted the following affirmative defenses, *inter alia:* (1) that its cancellation of letter of credit No. 110/84 was effected pursuant to, and under compulsion of, an act of the sovereign State of Uganda; (2) that under Ugandan law, performance by petitioner of the obligation it had undertaken to respondents was unlawful; that petitioner was not liable for non-performance compelled by the dictates of Ugandan law; and that the application of New York law, rather than the law of Uganda, would deny petitioner the protection guaranteed to it by the Constitution of the United States; and (3) that the state court was precluded by the Bretton Woods Agreement from enforcing the contract upon which respondents' claim is based.

Petitioner renewed its contentions with respect to the federal questions involved at each stage of the litigation in the state courts. The opinion of the state court ex-

plicitly recognizes the existence of the federal questions in the following language: "Defendant contends that the complaint must be dismissed because the court lacks subject matter jurisdiction, that the law of the Republic of Uganda applies and under it the complaint must be dismissed, that the decision under review is contrary to the act of state doctrine, and that said decision violates the Bretton Woods Agreement" (A 4).

Reasons for Granting the Writ

This case presents substantial questions arising under the Constitution of the United States. The New York Court of Appeals has undertaken to decide them. In so doing, the state court purported to resolve issues that this Court has not dealt with in specific terms, but which only this Court can, and should, determine. Moreover, having assumed a jurisdiction which, we submit, exceeded its constitutional power, the state court decided the federal questions in a way that does not accord with applicable decisions of this Court.

More particularly, the state court's disposition of the issues before it requires review by this Court for the following reasons. (1) Adjudication of the controversy by the state court denied petitioner due process of law guaranteed by the United States Constitution, in that, both parties being non-residents, and the petitioner not having undertaken an obligation to respondents to make any performance in New York[5], New York had no jurisdiction

[5] The contingent obligation undertaken by petitioner toward a hypothetical (and, in fact, non-existent) negotiating bank never became actual, and was, in any event, too remote from the controversy between petitioner and respondents to justify judicial interference by the State of New York. Cancellation of the reimbursement facility, but not of the credit in favor of respondents, would have given rise to no claim by respondents, but only a claim by a negotiating bank. Such a claim is, of course, wholly hypothetical, because there was no negotiating bank in this case.

over the cause nor over the person of the petitioner. (2) The lack of jurisdiction over the cause could not be cured by attachment of petitioner's bank account in New York, and, because the New York court lacked jurisdiction of the cause, the distraint upon petitioner's property, without prior notice or opportunity to be heard, was itself a taking of property without due process of law. (3) Inasmuch as petitioner's obligations to respondents (as distinct from any contingent obligations undertaken to a hypothetical negotiating bank) were both undertaken and performable exclusively in Uganda, the contract between petitioner and respondents was made and to be performed in accordance with and was governed by the laws of Uganda. Under the laws of Uganda, that contract was unenforceable. Performance by petitioner would have been unlawful. Under controlling decisions of this Court, the imposition of liability under New York law constituted a denial of due process guaranteed by the United States Constitution. (4) In view of the fact that the petitioner's cancellation of the letter of credit was effected in Uganda and notice thereof transmitted from Uganda, in accordance with an effective mandate of the Government of Uganda, the federal act of state doctrine provided an absolute defense to petitioner and the state court's rejection of that defense denied petitioner due process of law. (5) The state court exceeded its authority in its construction of a treaty of the United States, and by enforcing the contract in suit, disregarding the explicit provisions of the Bretton Woods Agreement, in violation of Article VI, clause 2 of the United States Constitution.

I.

The State Court Decided Substantial Federal Questions That Should Be Determined Only by This Court

When, as in this case, nationals of foreign countries and international business transactions are involved, the scope of a state court's jurisdiction over the subject matter and the parties raises important federal questions. This Court has dealt with the scope of state court jurisdiction in the context of our federal system of government but we are aware of no determination by this Court that would support the New York court's assumption of jurisdiction in this case.

In cases where no question was raised as to the jurisdiction of a state court over the subject matter and the parties, this Court has had occasion to declare that the state court may not shape its judgment on the basis of state policies that are inconsistent with national foreign policy. We are aware of no decision of this Court that would support the power of a state affirmatively to impose its policies with respect to foreign affairs by providing judicial remedies to foreign nationals, non-residents of the state, who complain against other foreign nationals, non-residents of the state, in respect of conduct required by the laws and policies of a foreign country in which such conduct occurred.

A. The State Court Was Not Authorized to Adjudicate This Case.

The New York courts lacked original jurisdiction of the subject matter and of the parties in this controversy, which arises out of the alleged breach of a letter of credit contract made by a Ugandan bank with an Israeli business entity. The letter of credit contemplated the drawing of drafts in Israel, on a company located in Uganda, that

were to be presented for payment in Uganda, and payment of which, in Uganda, was guaranteed by a Ugandan bank located in Uganda. No original jurisdiction vested in the New York courts by reason of the fact that the drafts were denominated in United States dollars nor by reason of the fact that the Ugandan bank, gratuitously and not as a term of its agreement with any other contracting party, offered to cause the payment in New York of claims against it by any bank on condition that such bank had negotiated drafts under the letter of credit and certified that its conditions had been met. Indeed, the leading cases of this Court suggest that any such assumption of jurisdiction violates due process of law. *Hanson* v. *Denckla,* 357 U.S. 235 (1958). See also, *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945); *McGee* v. *International Life Ins. Co.,* 355 U.S. 220 (1957).

This Court has held that a state court may exercise *in personam* jurisdiction over a non-domiciliary corporation where it is "reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there." *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945) at page 317.

The instant case does not arise in the "context of our federal system of government" and it is not reasonable in the circumstances of this case to require petitioner to answer in New York the complaint there lodged against it by respondents. That this controversy lies outside the context of our federal system of government is self-evident. That it is unreasonable for the New York courts to assume jurisdiction is apparent for the following reasons.

First, the undisputed evidence establishes that, in issuing its letter of credit No. 110/84, petitioner did not contemplate the application of New York law to the transaction nor was there any reason for it to anticipate that its undertaking to respondents would be governed by any law other than that of Uganda where it issued the letter of credit

and where its performance under the credit was to occur. Petitioner undertook no obligation to respondents or to Hiram Zeevi and Co. (Uganda) Ltd. that was performable in New York. Accordingly, petitioner at no time assumed or owed any duty to account, in a New York court, for its performance or non-performance of its engagement to respondents.

The fact that petitioner voluntarily offered to negotiating banks a contingent and conditional facility for reimbursement in New York is insufficient to bring the controversy between petitioner and respondents within the cognizance of the New York courts. The uncontroverted evidence in the record establishes that as a matter of generally accepted banking practice the proposal for reimbursement of negotiating banks conferred on respondents no rights against petitioner (R. 158; 168-169). It was intended to simplify and reduce the paper work and traffic between banks in the course of their transactions in foreign currencies. It would clearly be unreasonable to hold that a consequence of this inter-bank arrangement was to make petitioner accountable to respondents in the New York courts.

Second, petitioner is a banking corporation organized and existing under the laws of Uganda. It maintains no branch, agency, or other establishment in New York and conducts no activities in New York that would make it amenable to service of process of the New York courts. Maintenance of correspondent relationships, including an account with First National City Bank in New York, did not constitute activities that subject petitioner to the jurisdiction of the New York courts. *Bank of America* v. *Whitney Bank,* 261 U.S. 171 (1923).

Third, the controversy does not involve property in New York, title to which is in dispute or which is otherwise available to serve as the basis for *in rem* jurisdiction. Even if it be assumed, *arguendo,* that petitioner had

proposed to use its credit balance with First National City Bank to make a payment to or for the benefit of respondents, and had so instructed First National City Bank, respondents would have acquired no rights in respect of such credit balance. *Erb* v. *Banco di Napoli,* 243 N.Y. 45, 49 (1926).

Fourth, respondents are not citizens or residents of New York or otherwise so situated as to claim the protection of New York law or the assistance of the New York courts in respect of their claims against non-domiciliaries of New York. *Hanson* v. *Denckla, International Shoe Co.* v. *Washington* and *McGee* v. *International Life Ins. Co.* (*supra*).

Fifth, the deficiencies of jurisdiction were not and could not be remedied through the device of attaching petitioner's bank account. A state may not create a jurisdiction it does not possess by seizing property of an absent defendant in order to create a *res. Simonson* v. *International Bank,* 14 N.Y.2d 28 (1964). In the case at bar there is an:

> ". . . absence of those 'affiliating circumstances' without which the courts of a State may not enter judgment imposing obligations on persons (*jurisdiction in personam*) or affecting interests in property (jurisdiction *in rem* or *quasi in rem*)." *Hanson* v. *Denckla,* 357 U.S. 235 (1958) at page 246.[6]

---

[6] The quoted language is not in conflict with this Court's decision of *Harris* v. *Balk,* 198 U.S. 215 (1905). In *Harris,* assumption of jurisdiction *quasi in rem* was allowed where the plaintiff attaching the debt was a resident of the state assuming jurisdiction by way of attachment; and plaintiff's residency in the forum is an important consideration in determining whether assumption of jurisdiction conforms to due process. See *McGee* v. *International Life Ins. Co.,* 355 U.S. 220 (1957), at page 223. In the case at bar, neither petitioner nor respondents were, or are, residents of New York or have any other connection, substantial or otherwise, with the state of New York.

Moreover, the seizure of petitioner's property without any prior notice to petitioner or opportunity to be heard as to the seizure, was itself a denial of due process. *Fuentes* v. *Shevin*, 407 U.S. 67 (1972). *Fuentes*, however, need not be exclusively relied upon. In *North Georgia Finishing, Inc.* v. *Di-Chem, Inc.*, No. 73-1121 (1975) not officially reported, this Court held that attachment of property is offensive to the due process clause where there is no notice or opportunity to determine the appropriateness of such an attachment. In *North Georgia*, where, as in the case at bar, the seized property involved a bank account of a corporation, this Court stated:

> "Here, a bank account, surely a form of property, was impounded and, absent a bond, put totally beyond use, during the pendency of the litigation on the alleged debt, all by writ of garnishment issued by a court clerk without notice or opportunity for an early hearing and without participation by a judicial officer." 43 Law Week at page 4194.

North Georgia held unconstitutional a pre-hearing seizure in an action where there was no dispute as to the state's power to assume jurisdiction over the defendant. The seizure in the case at bar, by a state otherwise having no jurisdiction over petitioner, is more offensive to due process than the seizure held unconstitutional in *North Georgia*. Indeed, a three-judge district court has recently held the New York attachment statute, used to seize petitioner's property herein, unconstitutional under this Court's decision in *Fuentes*. *Burt Randolf Sugar and Wrestling, Inc.* v. *Curtis Circulation Co.*, 377 F.Supp. 1055 (S.D.N.Y. 1975).

B. In This Case the Use of Judicial Action to Implement State Policy is Offensive to the Constitution of the United States.

The opinion of the state court reveals that its judgment was intended to give effect to the state policies of maintaining the "preeminent financial position" of New York and enhancing its claim to be "a financial capital of the world, serving as an international clearing house and marketplace for a plethora of international transactions" (A 6-7) as well as to give effect to New York's "sense of justice and equity as embodied in our public policy" and "the well-known policy of this State" against acquiescence in "the confiscatory and discriminatory acts of the Ugandan goverment, . . ." (A 7-8). The explicit allegations of the complaint in this action demonstrate that the claim for relief is in part based upon charges of politically and socially unacceptable policies and acts of the Ugandan government and the complaint embodies newspaper and magazine articles calculated to emphasize the repugnance of those Ugandan laws, policies, and acts which constrained petitioner to cancel its letter of credit in favor of respondents. The action of the New York courts constituted positive response to this instigation of a conflict between the policies of New York State and the policies of the Republic of Uganda.

The Constitution of the United States vests exclusively in the Federal government the right to conduct foreign affairs. This court has explicitly held that where there is a conflict between the policies of the Federal government and the public policy of New York, "the state of New York does not exist." *United States* v. *Belmont*, 301 U.S. 324 (1937), at page 331; *United States* v. *Pink*, 315 U.S. 203 (1941). The state court pretends, however, that "there being no present policy of the Executive Branch of the United States Government requiring acquiescence in the confiscatory and discriminatory acts of the Ugandan government" (A 8), New York is free to declare and im-

pose its own public policy. This contention, we respectfully submit, is both sophistical and mischievous.[7]

In the circumstances of this case, the state court has done more than to apply its own public policy in the absence of an explicitly enunciated national policy. In this case, the state court has not confined itself to withholding a remedy because of repugnance to the policies of the party seeking judicial assistance; it has attempted affirmatively to impose its own policies by applying sanctions against a non-resident foreign national which, in its own country, was constrained to comply with governing law that is distasteful to the New York court.

In our submission, by so acting, the state court grossly exceeded the limitations imposed upon it by the Constitution of the United States. The question so raised, in any event, is one that can only be answered by this Court and which, we respectfully submit, most certainly should be answered.

II.

The State Court Decided Substantial Federal Questions In a Way Not in Accord With Applicable Decisions of This Court

This case does not belong in the courts of New York. That conclusion is strongly supported by the fact that,

---

[7] The policies of the Executive Branch need not be, and most frequently are not, articulated in terms of a broadside supporting or attacking the practices of a particular foreign government. The fundamental policies of the United States, expressed in treaties and reflected in jurisprudence (q.v., *infra*, pp. 21-28), look to stability of international relations. "So let there be no mistake about it: International cooperation is a vital factor in our lives today. This is not a moment for the American people to turn inward." The State of the Union Address by the President of the United States (H. Doc. R's 94-3), 121 Cong. Rec. No. 2 (Jan. 15, 1975). This is not a moment for a state court to undertake a role in the formulation of foreign policy.

having assumed a jurisdiction they did not possess, the New York courts so far departed from the principles laid down in applicable decisions by this Court as to require review and correction by this Court.

A. Due Process Requires that Ugandan and Not New York Law Be Applied.

By any test, the transactions out of which this case arises were so intimately and predominantly related to Uganda as to require the application of Ugandan law. The transaction was initiated in Uganda by Hiram Zeevi and Co. (Uganda) Ltd. (A 23-25). Petitioner is a Ugandan bank (A 12). It was petitioner's intention and understanding that the letter of credit "would be subject to and construed pursuant to the laws of the Republic of Uganda" (R. 158) and Hiram Zeevi and Co. (Uganda) Ltd. "affirmatively represented" to petitioner that isssuance and performance of the letter of credit would be in accord with Ugandan law and regulations (R. 156-7). The application and effect of Ugandan law has been stated in the record by a qualified Ugandan lawyer who was familiar with the transaction (R. 143-147), and that evidence stands uncontradicted. The letter of credit was issued in Uganda (A 29). It contemplated presentation of drafts for payment in and only in Uganda (A 29-30). Petitioner undertook no obligation to respondents to take action of any sort outside of Uganda.[8]

Inasmuch as Ugandan law governed, the application, *brutum fulmen*, of New York law is an unconstitutional denial of due process of law, that must not be allowed to

---

[8] The reimbursement facility was not, as the state court erroneously said, "an integral part of that for which the parties bargained" (A 26-28). Even if it were so treated, for purposes of conferring jurisdiction, it was not a factor of sufficient weight to shift the center of gravity from Uganda to New York for purposes of ascertaining what law is to govern. See *Auten* v. *Auten*, 308 N.Y. 155 (1954).

stand uncorrected. In *Lauritzen* v. *Larsen*, 345 U.S. 571, 590-91 (1953), this Court said:

> "We have held it a denial of due process of law when a state of the Union attempts to draw into control of its law otherwise foreign controversies, on slight connections, because it is a forum state [citations]."

In Accord:

Home Insurance Co. v. *Dick*, 281 U.S. 397 (1930).

Moreover, had the court below not incorrectly applied the law of New York, instead of the law of Uganda (the jurisdiction with the most significant contacts with the controversy in question), judgment must have been rendered for petitioner. Because the expenditure of Ugandan foreign exchange was contemplated and would have been involved, the letter of credit in controversy was subject to the Exchange Control Act of Uganda (R. 144). The expenditure of foreign exchange without currently valid permission of the Minister of Finance is strictly prohibited by the Exchange Control Act of Uganda (R. 144). The Bank of Uganda, acting with the authority of the Minister of Finance of Uganda (R. 145), notified petitioner that foreign exchange allocations in favor of the beneficiary of Credit No. 110/84 had been revoked (R. 145 & 148-59). Revocation of foreign exchange allocations is specifically authorized by the Exchange Control Act of Uganda (R. 145). Because the requisite foreign exchange allocations were revoked, the Bank of Uganda directed petitioner not to make the foreign exchange payments contemplated by the letter of credit (R. 145 & 159). Had petitioner ignored the directives of the Government of Uganda and made the foreign exchange payments contemplated by Credit No. 110/84, petitioner would thereby have commited an unlawful act (R. 145 & 159). Under the law of Uganda, petitioner incurred no liability for its refusal to

commit an unlawful act (R. 143-147). The attempt by the state court to enlarge petitioner's obligation by imposing liability is proscribed by applicable decisions of this Court. *Deutsche Bank* v. *Humphrey*, 272 U.S. 517 (1926); see also, *Menendez* v. *Saks & Co.*, 485 F. 2d 1355 (2nd Cir. 1973).

B. Under the Federal Act of State Doctrine Petitioner's Compliance with the Directives of the Ugandan Government Constitutes a Complete Defense.

The decision of the state court reflects a misapprehension of the federal act of state doctrine, as enunciated by controlling decisions of this Court, that should not be allowed to go uncorrected.

The Ugandan government is not a party to this action. It seeks no relief from a court in the United States. It is not susceptible to judicial sanctions. A state court should not be permitted to punish petitioner as a whipping-boy for the Ugandan government.

From the beginning, this Court has made plain that in a controversy between private litigants, our courts will not impose liability upon a defendant who has acted in accordance with the dictates of law or the constraints of governmental authority, even though the laws or constraints are repugnant to the policies of the forum. In *Underhill* v. *Hernandez*, 168 U.S. 250 (1897), this Court held that a foreign individual who, in a foreign country, acted in accordance with the laws and directives there obtaining, could not be held liable to the plaintiff who was damaged by such acts. In *Oetjen* v. *Central Leather Co.*, 246 U.S. 297 (1918), this Court denied recovery against a defendant who brought into this country property that had been confiscated from plaintiff in Mexico and thereafter acquired by defendant.

The doctrine has most frequently been articulated in terms of the impropriety of the courts of one nation adjudicating with respect to the governmental acts of another nation; or, as stated in *Underhill* v. *Hernandez*:

> "Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." 168 U.S. at page 252.

In Accord:

> *American Banana Co.* v. *United Fruit Co.*, 213 U.S. 346 (1909);
> *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964).

The corollary, in a controversy between private litigants, is that our courts will not characterize as wrongful, and impose liability for, acts or omissions of a non-governmental defendant which did not, in effect, reflect the will or desire of such defendant, but flowed from an exercise of paramount authority. In this case, therefore, compliance by petitioner in Uganda, with the directives of the Ugandan government, gave rise to no claim cognizable in the courts of the United States.

The state court which, in prior decisions, had followed the dictates of the act of state doctrine, *Salimoff & Co.* v. *Standard Oil Co.*, 262 N.Y. 220 (1933), sought to evade its impact in this case by asserting that the relevant acts of the Ugandan government were without effect in New York. This assertion, however, is untenable for the following reasons.

It is true that the acts of a foreign government have no extra-territorial effect except insofar as the forum is moved by comity to accord effect to them. This gloss on

the act of state doctrine is relevant to situations in which a foreign government seeks to affect tangible or intangible property that has a situs beyond its borders. In this case, however, the record is clear that no property, tangible or intangible, within the State of New York, was affected by Ugandan law or by petitioner's cancellation of letter of credit No. 110/84 in accordance with the dictate of the Ugandan government. Neither the directives of the Ugandan government nor the acts of petitioner in compliance therewith altered or purported to alter title or other interests in any property, tangible or intangible, in New York.

The establishment of letter of credit No. 110/84, by its terms, contains no engagement by petitioner to transfer or pay to respondents in New York any money or other property there situated. The offer (never accepted) to negotiating banks contained in the reimbursement clause was not a transfer or commitment to transfer any property in New York; it was, at most, a conditional payment order which conferred no enforceable rights against petitioner's correspondent, First National City Bank, or in any credit balance that petitioner may have maintained with First National City Bank. *Erb* v. *Banco di Napoli, supra.* The only property that petitioner had in New York was a debt owed to it, and to no one else (see New York Banking Law Section 134(4) and (5)). The letter of credit arrangement gave respondents no rights *in rem* or otherwise, with respect to that debt. The establishment of the letter of credit did not create a debt from petitioner to respondents, in New York or elsewhere, and its cancellation did not create a debt with a situs in New York. Even if, as respondents contend, the cancellation of the credit was wrongful, the consequence was at most the creation of a liability on the part of petitioner, and not the creation of a debt that could be localized as property in New York.

Accordingly, the decisions cited by the state court[9] are quite beside the point, as, indeed, are those decisions of the federal courts which establish the extra-territorial invalidity of foreign governmental acts.

The inescapable fact is that the Ugandan governmental action was not intended to and did not affect property or rights existing outside Uganda; those acts were intended to be, and were, fully executed and effective within the territory of the Ugandan government; and those acts had the effect of prohibiting petitioner from performing the contractual engagements it had made, and was to perform, in Uganda. The applicable decisions of this Court, consequently, proscribe the imposition of liability upon petitioner because: (1) petitioner has no liability cognizable in our courts flowing from its compliance in Uganda with the dictates of the Ugandan government; and (2) entry of judgment against petitioner predicated upon a liability imposed under New York law would deny to petitioner that due process of law guaranteed by the Constitution of the United States.

In this case, the obligation undertaken by petitioner to respondents was undertaken in Uganda. It was an obligation both governed and measured by Ugandan law. The pronouncement of Circuit Judge Mansfield, in *Menendez* v. *Saks*, 485 F.2d 1355 (2nd Cir. 1973), a case relied upon by the Court below (A 8), should be dispositive of this point:

> ". . . In such cases the obligation may not be 'enlarged by the fact that the creditor happens to be able to catch his debtor here,' Deutsche Bank v.

---

[9] *Huntington* v. *Attrill*, 146 U.S. 657 (1892); *Mertz* v. *Mertz*, 271 N.Y. 466 (1936). In *Vladikavkazsky Railway Co.* v. *New York Trust Co.*, 263 N.Y. 369 (1934), the defendant was a New York bank that admittedly owed a debt payable only in New York; the issue was whether the Russian decrees could transfer that debt from the original depositor to its successor by nationalization.

Humphrey, 272 U.S. 517, 47 S.Ct. 166, 71 L.Ed. 383 (1926); Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S. Ct. 634, 78 L. Ed. 1178 (1934), since an enlargement of the obligation would be tantamount to a denial of due process. See Home Insurance Co. v. Dick, 281 U.S. 397, 50 S.Ct. 338, 74 L. Ed. 926 (1930); Confederation Life Ass'n. v. Ugalde, 151 So.2d 315 (Fla. App. 1963), rev'd in part, 164 So.2d 1 (Fla. 1964); Tillman v. Russo Asiatic Bank, 51 F.2d 1023 (2d Cir.), cert. denied, 285 U.S. 539, 52 S. Ct. 312, 76 L. Ed. 932 (1931); Holderness v. Hamilton, Fire Ins. Co. of New York, 54 F. Supp. 145 (S.D. Fla. 1944)." 485 Fed.2d at 1367.

C. The Judgment of the State Court Violates a Treaty of the United States.

Throughout the course of this litigation, the respondents have insisted that the object of the transactions was to exchange Ugandan shillings for United States dollars.[10] The method chosen was to authorize respondents to draw dollar drafts on Hiram Zeevi and Co. (Uganda) Ltd. Under Ugandan law prevailing and in effect since 1964, an exchange of Ugandan currency for foreign currency was prohibited except in accordance with the exchange control regulations of the Ugandan government (R. 144-145). Accordingly, upon the representation by Hiram Zeevi and Co. (Uganda) Ltd. that all necessary Ugandan government approvals had been obtained (R. 156-7), petitioner established its letter of credit No. 110/84 authorizing respondents to draw dollar drafts on Hiram Zeevi and Co. (Uganda) Ltd. and guaranteeing that such

---

[10] This is initially apparent in the complaint (R. 20-28). Respondents further argued that their goal was to effect the exchange of Ugandan shillings in Kampala, Uganda, for United States dollars in New York, but their pleadings contain no such allegation, nor did they offer any proof in support of the assertion.

dollar drafts would be paid on presentation in Kampala, Uganda; at the same time, Hiram Zeevi and Co. (Uganda) Ltd. placed with petitioner, in Uganda as "margin", an amount of shillings equivalent at the then rate of exchange, to the dollar amount of the drafts. The arrangement was admittedly contractual and explicitly involved Ugandan currency which, respondents allege, was "deposited" with petitioner in anticipation of its exchange for dollars (R. 20-21).

Article VIII, Section 2(b) of the Bretton Woods Agreement (60 Stat. 1401 *et seq.*), provides in relevant part:

> "Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member." (60 Stat. 1411).

The provisions of Article VIII, Section 2(b) have the force of law in the United States pursuant to 22 U.S.C. Section 286h.

Credit No. 110/84, upon which respondents' claim is based, is an exchange contract involving the currency of Uganda; and, because the requisite permission for expenditure of foreign exchange was revoked, performance by petitioner would have been contrary to the Exchange Control Act of Uganda (R. 143-157; and see, generally: Nussbaum, *Exchange Control and the International Monetary Fund,* 59 Yale L.J. 421 (1950)).

In *Banco do Brasil* v. *Israel Com. Co.,* 12 N.Y.2d 371 (1963), *cert. denied* 376 U.S. 906 (1964), the New York Court of Appeals said of Article VIII, Section 2(b) of the Bretton Woods Agreement:

> "The sanction provided in subdivision (b) of Section 2 is that contracts covered thereby are to be 'unenforceable' in the territory of any member. The

clear import of this provision is to insure the avoidance of the affront inherent in any attempt by the courts of one member to render a judgment that would put the losing party in the position of either complying with the judgment and violating the exchange controls of another member or complying with such controls and refusing obedience to the judgment. A further reasonable inference to be drawn from the provision is that the courts of no member should award any recovery for breach of an agreement in violation of the exchange controls of another member." (12 N.Y. 2d at 376).

In *Banco do Brasil,* the state court was asked, not to enforce an unenforceable exchange contract, but to impose liability after the event on a United States national for entering into and performing a contract that violated the currency laws of Brazil. By a divided vote, the New York court declined to extrapolate the mandate of the treaty, and this Court denied certiorari. That situation is a far cry from the present case. In *Banco do Brasil,* the state court properly declined to alter a treaty of the United States by construing it expansively; here it improperly refused to give effect to the plain mandate of the treaty.[11]

The United States is a signatory to the Bretton Woods Agreement which is a treaty and "the supreme law of the

---

[11] The bald assertion that "said letter of credit is not an exchange contract" (A 9) is unsupported by authority or reason and, in the light of the uncontroverted evidence, such assertion is untenable. Where, as here, a treaty of the United States is involved, it is the practice of this Court not to rely on conclusions of the state court, but rather to "review or independently determine all questions on which a federal right is necessarily dependent." *United States* v. *Pink,* 315 U.S. 203 (1941) at page 217. See also *United States* v. *Ansonia Brass & Copper Co.,* 218 U.S. 452 (1910).

land" within the meaning of the Supremacy Clause of the United States Constitution (Art. VI, Cl. 2). To avoid interference with the foreign policy of the United States, state law and state policy must yield to treaties of the United States. *United States* v. *Belmont,* 301 U.S. 324 (1937); *United States* v. *Pink,* 315 U.S. 203 (1942); *Kolovrat* v. *Oregon,* 366 U.S. 187 (1961). In *Kolovrat,* this Court specifically stated that a state court is required to give effect to the results mandated by the Bretton Woods Agreement, even if those results are not satisfactory to the state's own policy:

> "Doubtless these agreements may fall short of that goal. But our National Government's powers have been exercised so far as deemed desirable and feasible toward that end, and the power to make policy with regard to such matters is a national one from the compulsion of both necessity and our Constitution. After the proper governmental agencies have selected the policy of foreign exchange for the country as a whole, Oregon of course cannot refuse to give foreign nationals their treaty rights because of fear that valid international agreements might possibly not work completely to the satisfaction of state authorities." 366 U.S. at page 19.

The decision of the state court is inconsistent with prior decisions of this Court, as well as in flagrant disregard of obligations imposed by a treaty of the United States. It requires review and reversal by this Court.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

HENRY HARFIELD
Attorney for Petitioner
53 Wall Street
New York, N. Y. 10005

SHEARMAN & STERLING
HERMAN E. COMPTER
JOHN J. E. MARKHAM, II
of Counsel

July 10, 1975.

APPENDIX

Opinion of the Court of Appeals, State of New York

STATE OF NEW YORK

COURT OF APPEALS

No. 250

J. Zeevi and Sons, Ltd., &ors., copartners &c.,

Respondents,

vs.

Grindlays Bank (Uganda) Limited,

Appellant.

OPINION

[This opinion is uncorrected and subject to revision before publication in the New York Reports.]

COOKE, J.

Defendant appeals from an order of the Appellate Division, First Department, which unanimously affirmed an order of the Supreme Court, New York County, granting the motion of plaintiff J. Zeevi and Sons, Ltd., for partial summary judgment on the first cause of action in the complaint, denying defendant's cross motion for summary judgment on both causes of action in said pleading, directing entry of judgment in favor of said plaintiff on said first cause of action and severing and continuing the remaining cause, as well as from the judgment entered thereon.

The first cause of action in the complaint involves an irrevocable letter of credit, dated March 24, 1972, numbered 110/84 and in the sum of $406,846.80. The second cause contains allegations regarding the deposit of a check with defendant on March 24, 1972 and the opening on the next day by defendant of an irrevocable letter of credit numbered 110/85 for $203,423.40. Allegedly, each letter of credit was drawn to plaintiff partnership. Plaintiffs assert that there are issues of fact warranting trial in respect to the latter transaction.

The pertinent factual picture unfolds without dispute. On March 24, 1972, Hiram Zeevi & Company (Uganda) Ltd., an Israeli corporation deposited with defendant, Grindlays Bank (Uganda) Ltd., local currency valued at approximately $406,846.80, for the purpose of establishing a fund upon which plaintiff J. Zeevi and Sons, an Israeli copartnership, could draw money. On the same date, defendant opened its irrevocable credit No. 110/84 for $406,846.80 in favor of said partnership and issued a letter of credit acknowledging that it had opened the irrevocable credit for "$406,846.80 (U. S. dollars four hundred and six thousand eight hundred and forty six cents eighty)", and provided that the credit amount be available against clean drafts drawn on the depositor in equal amounts of $40,684.68 commencing April 15, 1972 and monthly thereafter. It stated "[t]his credit is valid until 31st January, 1973 for presentation of drafts in Kampala." The letter concluded with these provisions:

> We guarantee the payment of drafts drawn in conformity with the terms and conditions stated. The negotiating bank must send drafts direct to us by air-mail.
>
> The negotiating bank is authorised to claim reimbursement for their payments on the due dates listed above from First National City Bank, 399 Park

> Avenue, New York to the debit of our account with them together with a certificate to the effect that all terms of the credit have been complied with and the relative drafts have been airmailed to us.

By directives dated March 28, 30 and April 13, 1972, officials of the Bank of Uganda, acting with the authority of the Minister of Finance under the Exchange Control Act of Uganda, notified defendant that foreign exchange allocations in favor of Israeli companies and nationals should be cancelled and, accordingly, ordered it to make no foreign exchange payments pursuant to credit number 110/84. While, on April 4, 1972, defendant had informed its New York agent, First National City Bank (hereinafter Citibank), of the issuance of the letter of credit for "credit No. 110/84", defendant advised said agent, by cable dated and received April 14, 1972 and by letter of April 17, 1972, that the Government of Uganda had instructed it to cancel the letter of credit numbered 110/84 and directed said agent not to "effect payment against drawing US $40684-68 due to be paid on or after 15th April 1972" A cable and letter bearing the same respective dates and a corresponding message were forwarded by defendant to said partnership. A letter dated May 5, 1972 from defendant stated: "In the circumstances we have had no option but to instruct our agents in New York not to effect reimbursement of the drawing due to be made on 15.5.1972 without further reference to us."

On December 28, 1972 Chemical Bank ("Chemical") presented to Citibank for reimbursement ten drafts each for $40,684.68, totalling $406,846.80, drawn under letter of credit 110/84, and on January 11, 1973 Chemical wrote to Citibank that "we are again presenting our domestic collection R92049 in the amount of $406,846.80 under irrevocable letter of credit 110/84, reimbursable on your good

selves and ask for reimbursement as per the terms and conditions thereof." On January 19, 1973 Citibank returned the subject drafts unpaid to Chemical.

This action by the partnership, the beneficiary of the two letters of credit, and J. Zeevi and Sons, Ltd., the assignee of said partnership, was commenced by an order of attachment on November 24, 1972, whereby the funds of defendant on deposit with Citibank were attached and defendant was served by publication. Supreme Court denied defendant's motions to dismiss for lack of jurisdiction and to increase the amount of plaintiff's bond on the attachment and to reduce the amount of the attachment, both of which orders were affirmed by the Appellate Division.

Defendant contends that the complaint must be dismissed because the court lacks subject matter jurisdiction, that the law of the Republic of Uganda applies and under it the complaint must be dismissed, that the decision under review is contrary to the act of state doctrine, and that said decision violates the Bretton Woods Agreement.

Subdivision 2 of section 200-b of the Banking Law, entitled "Actions maintained against foreign banking corporation; residents; foreign corporations, foreign banking corporations as nonresidents," provides in part:

> 2. Except as otherwise provided in this chapter, an action * * * against a foreign banking corporation may be maintained by another foreign corporation or foreign banking corporation or by a nonresident in the following cases only:
>
> * * *
>
> (c) where the cause of action arose within this state,
>
> * * *.

Subdivision (b) of section 1314 of the Business Corporation Law contains almost identical language.

Opinion of the Court of Appeals, State of New York.

A letter of credit, a well-known instrumentality of commerce (*Kingdom of Sweden* v. *New York Trust Co.*, 197 Misc. 431, 441), is governed by the same general principles of law as are all other contracts in writing (*Moss* v. *Old Colony Trust Co.*, 246 Mass. 139, 151; *Bank of United States* v. *Seltzer*, 233 App. Div. 225, 229). It is either revocable or irrevocable and, once the latter has been established, the consent of all parties, particularly the beneficiary, is necessary in order to modify the original terms and conditions of the credit (*Lamborn* v. *National Park Bank of New York*, 240 N. Y. 520, 525; *Dulien Steel Products of Wash.* v. *Bankers Trust Co.*, 189 F. Supp. 922, 927, affd. 298 F. 2d 836 [C.C.A. 2, 1962]).

The first cause of the complaint alleges and the facts establish a cause of action occurring within New York. In the irrevocable letter of credit 110/84 under scrutiny, defendant contracted to pay upon compliance with its terms (*Lamborn* v. *National Park Bank of New York, supra,* at p. 525) and defendant's order countermanding payment by cable and letter took effect upon receipt by Citibank in New York and then gave rise to a cause of action here (*Gonzalez* v. *Industrial Bank* [*of Cuba*], 12 N Y 2d 33, 38). Citing *Hibernia Nat. Bank* v. *Lacombe* (84 N. Y. 367), this court stated in *Gonzalez* that "a cause of action arises where that is done which should not be done." In this instance, New York was the locus of repudiation, whereas it should have been a site of payment. The provision respecting reimbursement in New York was an integral part of that for which the parties bargained, it was not a discrete obligation. The separate character of defendant's undertakings is negated by its guarantee of payment of drafts. The value to those in commerce of having a place at a financial capital where funds can be obtained on a simple letter of credit, away from a relatively small bank in an undeveloped country of uncertain political sta-

bility, is obvious. The reimbursement provision is quite essential, economically, to the total arrangement since a promisee would be unwilling to present a draft based on a letter of credit, in dollar terms, to a commercial house in the United States and then be required to wait a relatively inordinate time for the money to come from a remote source.

When defendant, the issuer, repudiated the letter of credit before presentment of the draft and before expiration of the letter, it was guilty of an anticipatory breach of contract and became liable for damages caused the beneficiary (*Foglino & Co.* v. *Webster,* 217 App. Div. 282, 297-298, mod. on other grounds 244 N. Y. 516; *Doelger* v. *Battery Park National Bank,* 201 App. Div. 515, 521-522; *Mendelson* v. *Wechsler,* 203 N.Y.S 197; 34 N Y Jur, Letters of Credit, § 38; see Uniform Commercial Code, § 5-115).

We come now to the question of the choice of law. "'[T]he rule which has evolved clearly in our most recent decisions is that the law of the jurisdiction having the greatest interest in the litigation will be applied and that the facts or contacts which obtain significance in defining State interests are those which relate to the purpose of the particular law in conflict'" (*Intercontinental Planning* v. *Daystrom,* 24 N Y 2d 372, 382). New York has an overriding and paramount interest in the outcome of this litigation. It is a financial capital of the world, serving as an international clearinghouse and market place for a plethora of international transactions, such as to be so recognized by our decisional law (*Intercontinental Planning* v. *Daystrom, supra,* at pp. 383-384). A vast amount of international letter of credit business is customarily handled by certain New York banks whose facilities and foreign connections are particularly adaptable to this field of operation (34 N Y Jur, Letters of Credit, § 10, p. 427). The parties, by listing United States dollars as the form

of payment, impliedly accepted these facts and set up procedures to implement their trust in our policies. In order to maintain its preeminent financial position, it is important that the justified expectations of the parties to the contract be protected (cf. *Kossick* v. *United Fruit Co.*, 365 U. S. 731, 741). Since New York has the greatest interest and is most intimately concerned with the outcome of this litigation, its laws should be accorded paramount control over the legal issues presented (cf. *Auten* v. *Auten*, 308 N. Y. 155, 161).

As typified by strong anti-Israel and anti-semitic suggestions made by Uganda's President to the Secretary General of the United Nations, the Bank of Uganda, by message dated March 28, 1972 and marked "TOP SECRET", directed defendant that "all payments to Israel companies and their agents, and to the Government of Israel whether by cheques, * * * or by letters of credit, should not be processed until clearance has been obtained from the undersigned." Sixteen days later in a message marked "CONFIDENTIAL" and to which was attached references to letters of credit 110/84 and 110/85, defendant was informed that "[t]here can never be any basis for the expenditure of foreign exchange unless value in the form of goods has been received in Uganda" and that "no foreign exchange payment should be effected on any of the allocations already advised to you on behalf of any Israel company." Defendant contends that these revocations or cancellations of foreign exchange allocations in favor of the beneficiary of credit number 110/84 were authorized by the Exchange Control Act of Uganda.

Laws of foreign governments have extraterritorial jurisdiction only by comity (*Huntington* v. *Attrill*, 146 U. S. 657, 669; *Mertz* v. *Mertz*, 271 N. Y. 466, 470). The principle which determines whether we shall give effect to foreign legislation is that of public policy and, where there is a conflict between our public policy and application of

comity, our own sense of justice and equity as embodied in our public policy must prevail (*Vladikavkazsky Ry. Co.* v. *New York Trust Co.*, 263 N. Y. 369, 378). It is clear, that no attempted confiscatory or discriminatory act of the Ugandan government, enforced or enacted after the issuance of letter of credit 110/84 could diminish the beneficiary's rights in respect to reimbursement and defendant's funds located in New York (see N. Y. Const., art. 1, §§ 6, 11). There being no present policy of the executive branch of the United States Government requiring acquiescence in the confiscatory and discriminatory acts of the Ugandan government, the well-known policy of this State against such acquiescence is operative (*Gonzalez* v. *Industrial Bank* [*of Cuba*], 12 N Y 2d 33, *supra*, at p. 39). Although the letter of credit when made was valid under the laws of Uganda, by virtue of subsequent governmental action the contract became unenforceable in that country. This action, however, was of no force in New York and the doctrine of impossibility of performance lends no comfort to defendant.

Neither does the federal act of state doctrine apply. The essence of this legal principle is that the courts of this country cannot question an act of a recognized foreign nation committed within its own territory, no matter how grossly that sovereign has transgressed its own law (see *Banco Nacional de Cuba* v. *Sabbatino*, 376 U. S. 398, 416; *French* v. *Banco Nacional de Cuba*, 23 N Y 2d 46, 52). The doctrine is not applicable here since a debt is not "located" within a foreign state unless that state has the power to enforce or collect it (*Menendez* v. *Saks & Co.*, 485 F. 2d 1355, 1364, cert. den. —— U.S. ——, 94 S. Ct. 2382).

Defendant urges that enforcement of the letter of credit contract would violate the foreign exchange laws of Uganda in disregard of a treaty Uganda and the United States are signatories to the Bretton Woods Agreement

(60 Stat. 1401 *et seq.*) which, in relevant part under section 2 (b) of article VIII, provides:

> Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member.

Contrary to defendants' position, the Agreement, even when read in its broadest sense, fails to bring the letter of credit within its scope, since said letter of credit is not an exchange contract. In *Banco Do Brasil, S. A.* v. *Isreal Commodity Co.* (12 N Y 2d 371), this Court frowned on an interpretation of said provision of the Bretton Woods Agreement which "sweeps in all contracts affecting any members' exchange resources as doing considerable violence to the text of the section" (pp. 375-376).

The order of the Appellate Division should be affirmed with costs.

* * * * * *

Order affirmed, with costs. Opinion by Cooke, J. All concur.

Decided June 16, 1975.

Order, Judgment and Remittitur of the Court of Appeals.

COURT OF APPEALS

STATE OF NEW YORK, ss:

PLEAS in the Court of Appeals held at Court of Appeals Hall, in the City of Albany, on the 6th day of May in the year of our Lord one thousand nine hundred and seventy-five, before the Judges of said Court.

WITNESS,

The HON. CHARLES D. BREITEL,
Chief Judge, *Presiding.*

JOSEPH W. BELLACOSA, *Clerk.*

REMITTITUR June 16, 1975

1 No. 74

J. Zeevi and Sons, Ltd., &ors., copartners &c.,
Respondents,

vs.

Grindlays Bank (Uganda) Limited,
Appellant.

BE IT REMEMBERED, That on the 13th day of September in the year of our Lord one thousand nine hundred and

seventy four, Grindlays Bank (Uganda) Limited, the appellant in this cause, came here unto the Court of Appeals, by Shearman & Sterling, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the Order of the Appellate Division of the Supreme Court in and for the First Judicial Department And J. Zeevi and Sons, Ltd., &ors., copartners, the respondents in said cause, afterwards appeared said Court of Appeals by Harry H Lipsig and Pamfil A Riposanu, its attorneys

Which said Notice of Appeal and the return thereto filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Henry Harfield, of counsel for the appellant- , and by Mr. Edmund B. Hennefeld, of counsel for respondents, brief filed amicus curiae for New York Clearing House Association, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

Opinion by Cooke, J.

All concur.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order is affirmed, &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the

Order, Judgment and Remittitur of the Court of Appeals.

State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the justices thereof, &c.

JOSEPH W. BELLACOSA,
Clerk of the Court of Appeals
of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, June 16, 1975

(SEAL)

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals with the papers originally filed therein, attached thereto.

JOSEPH W. BELLACOSA,
Clerk.

Entry of Judgment Upon Remittitur.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 24,330/1972

J. ZEEVI AND SONS, LTD., GAD ZEEVI, RIVKA ZEEVI, GALILLA PAGI and ENIA MELZER, copartners doing business as J. ZEEVI AND SONS, a copartnership,

Plaintiffs,

against

GRINDLAYS BANK (UGANDA) LIMITED,

Defendant.

The above-named defendant, Grindlays Bank (Uganda) Limited, having appealed to the Court of Appeals from an order of the Appellate Division of the Supreme Court, First Judicial Department, entered in this action on the 16th day of May, 1974, affirming the order of the Supreme Court, New York County, entered on February 7, 1974, which granted plaintiffs' motion for partial summary judgment on the first cause of action, and denied defendant's cross-motion for summary judgment on both causes of action, and from the judgment of the Supreme Court, New York County, entered thereon, dated on or about February 19, 1974, and the Court of Appeals having heard said appeal and ordered and adjudged that the order so appealed from be affirmed, with costs, and the remittitur from the Court of Appeals having been filed in the Office of the Clerk of the County of New York,

Now, on motion of Harry H. Lipsig and Pamfil A. Riposanu, Esqs., attorneys for the plaintiffs, it is

Entry of Judgment Upon Remittitur.

ADJUDGED that the Order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, and that the plaintiff, J. Zeevi and Sons, Ltd., recover of the defendant, Grindlays Bank (Uganda) Limited, the costs and disbursements of this action as taxed, amounting to $1,411.12, making in all a total of One Thousand Four Hundred and Eleven and 12/100 ($1,411.12) Dollars, and that the plaintiff, J. Zeevi and Sons, Ltd., have execution therefor.

Judgment signed this 26th day of June, 1975.

NORMAN GOODMAN
Clerk

GRINDLAYS BANK
45 Kampala Road
Kampala, Uganda

FILED
June 26, 1975
NEW YORK
CO. CLERK'S OFFICE

J. ZEEVI & SONS
c/o Pamfil A. Riposanu
375 Park Ave.

Memorandum Opinion of Trial Court, New York County.

SUPREME COURT

NEW YORK COUNTY

INDIVIDUAL CALENDAR—PART XIII

[SAME TITLE]

WALTEMADE, J.:

This motion by defendant for an order dismissing the complaint and vacating the order of attachment upon the grounds that this Court lacks jurisdiction over the parties in this action is denied.

Plaintiff J. Zeevi and Sons, Ltd. and J. Zeevi and Sons, respectively, are a foreign corporation and a foreign copartnership duly organized and existing under the laws of the State of Israel. Defendant Grindlays Bank (Uganda) Limited is a foreign corporation duly organized under the laws of the Country of Uganda.

Hiram Zeevi & Company (Uganda) Ltd. desiring to transfer certain funds from Uganda to plaintiffs in New York deposited the funds with the defendant. In consideration thereof defendant issued its irrevocable letter of credit in favor of the Zeevi copartnership amounting to $610,270.20. In accordance with the terms and conditions of the letter of credit the bank negotiating the drafts was authorized to claim reimbursement for the payments on the respective due dates from First National City Bank, 399 Park Ave., New York in which the defendant had funds on deposit.

It is alleged that, on or about April 14, 1972 defendant breached the contracts by cancelling the letters of credit

and instructing First National City Bank not to pay on the drafts as they become due.

Plaintiffs have secured in rem jurisdiction by an order of attachment levying upon the assets of the defendant bank in the hands of First National City Bank, New York City in the sum of $710,270.20.

Defendant moves to dismiss the complaint and vacate the order of attachment on the ground that this Court lacks jurisdiction pursuant to Section 1314 of the Business Corporation Law. Such a claim is without merit as a careful examination of all the papers submitted reveals this case to be included as one of the types of action which may be brought under B.C.L. 1314.

B.C.L. 1314(b) states,

> "Except as otherwise provided in this article, an action or special proceeding against a foreign corporation may be maintained by another foreign corporation of any type or kind or by a non resident in the following cases only:
>
> (3) where the cause of action arose within this state, except where the object of the action or special proceeding is to affect the title to real property situated outside this state."

It is alleged that the whole purpose of the transaction was to transfer funds from Uganda to New York.

There is no doubt that a cause of action arose in New York when the defendant after issuing its irrevocable letters of credit payable in United States currency, and after guaranteeing the payment of the drafts, instructed First National City Bank, its agent in New York, where it kept funds on deposit for such purposes, not to honor the drafts drawn on such letters of credit.

Memorandum Opinion of Trial Court, New York County.

It is the opinion of this Court that based upon the documentary evidence submitted and pursuant to B.C.L. 1314 there is sufficient ties with the State of New York to enable this Court to retain in rem jurisdiction over the parties in this case.

Dated: Apr. 10, 1973.

W. A. W.,
J. S. C.

Memorandum Opinion of Trial Court, New York County.

SUPREME COURT

NEW YORK COUNTY

INDIVIDUAL CALENDAR—PART 13

Index No. 24330/72

J. ZEEVI AND SONS, LTD., GAD ZEEVI, RIVKA ZEEVI, GALILLA PAGI and ENIA MELZER, copartners doing business as J. ZEEVI AND SONS, a copartnership,

Plaintiffs,

against

GRINDLAYS BANK (UGANDA) LIMITED,

Defendant.

WALTEMADE, J.:

In this action by the beneficiary and assignees of two letters of credit to recover funds deposited in the defend-

ant bank, the complaint states two causes of action, each based upon one of the letters of credit, to which the defendant has interposed various defenses. The plaintiff, J. Zeevi and Sons, Ltd., moves for partial summary judgment on the first cause of action and the defendant cross-moves for summary judgment dismissing the complaint.

Except as to certain matters in the second cause of action, the operative facts are undisputed. On March 24, 1972, Hiram Zeevi & Company, an Israeli corporation deposited with defendant, Grindlays Bank Limited, in Uganda, local currency valued at approximately $406,846.80 for the purpose of establishing a fund upon which the plaintiff, J. Zeevi & Sons, an Israeli co-partnership, could draw money. The bank issued an irrevocable letter of credit numbered 110/84 to plaintiff, evidenced by cable and confirmation letter, both dated March 24, 1972. The letter of credit provided that the bank would guaranty payment of draft drawn against the depositor's account in Kampala, Uganda, in equal amounts of $40,684.68, commencing April 15, 1972, and monthly thereafter. The confirmatory letter provided that the bank negotiating the drafts for the beneficiary plaintiff, should seek reimbursement for its payments at the First National City Bank, 390 Park Avenue, New York, to the debit of the account which the defendant bank maintained therein. On March 24, 1972, Hiram Zeevi & Company also deposited for collection with the defendant a check of same date drawn on the Government of Uganda which was intended to establish funds for a second letter of credit numbered 110/85. Defendant's bank stamp shows that the check was cleared and paid on March 25, 1972; however, a later notation thereon dated March 27, 1972, shows that the Bank of Uganda, acting on behalf of the Government of Uganda, directed that payment of the check be stopped. It remains factually unclear whether the defendant in the interim issued a bind-

ing second letter of credit in reliance upon this further transaction. This uncertainty has given rise to the second cause of action upon which the remaining plaintiffs are assignees of the claim thereunder.

Thereafter, by directives dated March 28, 30, and April 13, 1972, various officials of the Bank of Uganda, acting with the authority of the Uganda Minister of Finance under the Exchange Control Act of Uganda, notified the defendant that foreign exchange allocations in favor of Israeli companies and nationals such as the respective parties hereto should be cancelled. The submitted papers which are well documented without controversion, demonstrate clearly that the Government of Uganda executed these directives solely to implement political policy.

On April 4, 1972, the defendant advised its New York agent, First National City Bank, of the issuance of the letter of credit numbered 110/84. Later, by telegram dated April 14, 1972, and confirmatory letter dated April 17, 1972, the defendant advised its New York agent that the credit was cancelled because of the Uganda Government directives. On May 5, 1972, defendant notified the plaintiff of the cancellation.

On January 11, 1973, Chemical Bank, as plaintiff's negotiating bank, was refused payment by First National City, of the first drafts drawn pursuant to the letters of credit. No part of the moneys has been returned or paid.

The defendant contends that it is justified in refusing payment of the funds on deposit, of which a like sum, upon commencement of this action, has already been attached against assets defendant possessed in New York. Defendant reasons that it is acting under lawful authority of the Republic of Uganda, and that the law of that country must be applied to determine the rights of the parties. The plaintiff urges that a conflict of laws exists which must yield in favor of New York law.

Memorandum Opinion of Trial Court, New York County.

In an earlier motion to dismiss the complaint and vacate the order of attachment, the defendant argued that this Court lacked jurisdiction. In denying the request, the Court found that "the whole purpose of the transaction between the parties was to transfer funds from Uganda to New York", and that "There is no doubt that a cause of action arose in New York when the defendant, after issuing its irrevocable letters of credit payable in United States currency and after guaranteeing the payment of the drafts, instructed First National City Bank, its agent in New York, where it kept funds on deposit for such purposes, not to honor the drafts on such letters of credit." The Court also found that based upon the documentary evidence submitted there are sufficient ties with the State of New York to enable this Court to retain in rem jurisdiction over the parties. This decision was unanimously affirmed by the Appellate Division without opinion. (J. Zeevi & Sons, Ltd. v. Grindlays Bank [Uganda] Ltd., 42 A D 2d 693.) To this decision, the Court now adds that in determining which of two conflicting laws should be applied to establish a claim, the modern concept of "grouping of contacts", or "center of gravity" is the determinative factor (Babcock v. Jackson, 12 N Y 2d 473). Under Babcock v. Jackson, the law of the jurisdiction having the greatest interest in the litigation will be applied and that the facts or contacts which obtain significance in defining State interest are those which relate the purpose of the particular law in conflict (Intercontinental Planning v. Daystrom, 24 N Y 2d 372, 382). The policy of the jurisdiction most intimately concerned with the outcome of the particular litigation is paramount (Auten v. Auten, 308 N.Y. 155, 161; cf. Babcock v. Jackson, supra).

There is no disagreement that the directives of the Republic of Uganda are clearly confiscatory. As a consequence, the well-known policy of this State against ac-

quiescence to confiscation is operative (Gonzalez v. Industrial Bank of Cuba, 12 N Y 2d 33, 39; Vladikavkazky Ry. Co. v. N.Y. Trust Co., 263 N.Y. 369). In Vladikavkazky, under somewhat analogous facts, the Court viewed the issue as a practical question of whether the law shall compel a debtor in this State to pay its debt or permit it to hold the property of its creditor indefinitely by reason of foreign legislation. Vladikavkazky narrowed the issue upon the principle that if the legislation is a confiscatory decree where, as here, it repudiates an otherwise sound obligation, it becomes contrary to our public policy and shocks our sense of justice and equity (id. p. 378). However, what is most relevant is that the funds are located and payable in this State (Moscow Fire Ins. Co. v. Bank of New York, 280 N.Y. 286).

From all of the foregoing, it is clear that New York has the paramount interest in the application of its law when the contacts which the Republic of Uganda and this State have with the instant controversy are examined in relation to the policies and purposes to be vindicated by the conflicting laws. The manifest purpose of New York law is to protect mercantile trade and enforce the performance of a binding contract. The Uganda law appears to abrogate that agreement by martial decree to enforce a purely political policy and to confiscate funds without due compensation. It is clear which of the two policies is palatable. It is also clear that the instant dispute has sufficient contacts with New York to give our State a substantial interest in applying its own policy. The principal debtor, its agent, its funds, and the place of performance, viz., New York, represent a sufficient grouping of contacts to gravitate a paramount concern to this forum.

The Court is mindful of the contention of the defendant that under Uganda law, performance by the bank might be unlawful and a complete defense. However, for reasons

already stated, this Court is hardly constrained to lend support to that law. Finally, the defendant has wholly failed to demonstrate that the terms of the Bretton Woods Agreement militate a different determination.

Accordingly, upon all of the foregoing, the motion for partial summary judgment upon the first cause of action is granted and the cross motion by the defendant for summary judgment is denied.

Settle order.

Dated: December 18, 1973.

W.A.W.,
J. S. C.

Statutes Involved.

United States Constitution Amendment XIV, Section 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, Article VI, Clause 2

Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Article VIII, Section 2(b) of the Bretton Woods Agreement, 60 Stat. 1411.

"Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member."

Statutes Involved.

New York Banking Law § 200-b(2).

2. Except as otherwise provided in this chapter, an action or special proceeding against a foreign banking corporation may be maintained by another foreign corporation or foreign banking corporation or by a nonresident in the following cases only:

(a) where the action is brought to recover damages for the breach of a contract made or to be performed within this state, or relatig to property situated within this state at the time of the making of the contract;

(b) where the subject matter of the litigation is situated within this state;

(c) where the cause of action arose within this state, except where the object of the action or special proceeding is to affect the title of real property situated outside this state;

(d) where the action or special proceeding is based on a liability for acts done within this state by a foreign banking corporation;

(e) where the defendant is a foreign banking corporation doing business in this state.

Business Corporation Law § 1314(b).

(b) Except as otherwise provided in this article, an action or special proceeding against a foreign corporation may be maintained by another foreign corporation of any type or kind by a nonresident in the following cases only:

(1) Where it is brought to recover damages for the breach of a contract made or to be performed within this state, or relating to property situated within this state at the time of the making of the contract.

(2) Where the subject matter of the litigation is situated within this state.

(3) Where the cause of action arose within this state, except where the object of the action or special proceeding is to affect the title of real property situated outside this state.

(4) Where, in any case not included in the preceding subparagraphs, a non-domiciliary would be subject to the personal jurisdiction of the courts of this state under section 302 of the civil practice law and rules.

(5) Where the defendant is a foreign corporation doing business or authorized to do business in this state.

Letter Request to Open a Letter of Credit.

P. O. Box 719
Phone 59373/59374
Cable: Heza Kampala
Kampala Uganda

Our ref: 218/700

23rd March 1972.

The Manager,
Grindlays Bank (U) Ltd.,
P.O Box 7131,
Kampala.

Dear Sir:

We hereby request to open a letter of credit to the amount of U.Shs: 4.380.885-60 in respect of 15 payments for equipment authorised by the Bank of Uganda, and to be paid in equal monthly rates for a period of 15 months, to Workers Bank Haifa, in favour of J. Zeevi & Sons, Haifa, in U.S. Dollars.

We shall thank you to act immediately to cover equipment purchased for Ministry of Defence work. Please inform Workers Bank Haifa, of the opening of the letter of credit by cable.

Yours faithfully,

Y. RAVEH
Y. Raveh,
Chief Accountant.

J. VERED-WEISS,
J. Vered-Weiss,
General Agent.

Application for Credit 110/84.

24th March, 1972.

The Manager,
Grindlays Bank (Uganda) Ltd.,
P.O. Box 7131,
Kampala.
Dear Sir:

Please open an irrevocable credit No. 110/84 on our behalf under which you are authorized to pay to J. Zeevi and Sons, P.O. Box 10104, Haifa, Israel the sum of U.S. $406,846.80 (U.S. dollars four hundred and six thousand eight hundred and forty six cents eighty).

This credit amount is available, as under, against clean drafts drawn on ourselves:

1. $40,684.68 payable on 15th April, 1972
2. $40,684.68 " " 15th May, 1972
3. $40,684.68 " " 15th June, 1972
4. $40,684.68 " " 15th July, 1972
5. $40,684.68 " " 15th August, 1972
6. $40,684.68 " " 15th September, 1972
7. $40,684.68 " " 15th October, 1972
8. $40,684.68 " " 15th November, 1972
9. $40,684.68 " " 15th December, 1972
10. $40,684.68 " " 15th January, 1973

Drawings under this credit must be made as above and are payable only on or after the dates shown.

This credit is valid until 31st January, 1973 for presentation of drafts in Kampala.

Special Instructions:—All charges for the handling of this credit and negotiation of drafts thereunder are payable by the opener.

Application for Credit 110/84.

All drafts must be enfaced "Drawn under Grindlays Bank (Uganda) Ltd., Kampala Credit No. 110/84 dated 24th March, 1972."

It is understood that the Bank is not responsible for the genuineness or accuracy of such shipping documents if apparently in order. In consideration of such drafts or documents being purchased or negotiated by your Branch or Agent we hereby agree duly to accept and pay them at maturity, together with interest at % from the date of each draft to the date of arrival of the return remittance provided such draft or drafts shall not exceed in the whole the amount of the Credit provided they be so negotiated before the expiry thereof, and even although the Customs Authorities may subsequently refuse to permit the entry of the goods into Uganda consequent upon restrictions being placed on their import.

It is understood that on no account shall any claim be made against the Bank after the drafts are retired.

Yours faithfully,

For Hiram Zeevi and Co. (Uganda) Ltd.

Letter of Credit 110/84.

GRINDLAYS BANK (UGANDA) LIMITED
(Incorporated in Uganda)

45 KAMPALA ROAD
P. O. Box 7131
KAMPALA, UGANDA

Telegrams National Kampala
Telex 61010
Telephone 55011

"Bills Dept."

In confirmation of our cable dated
24th March, 1972.

J. Zeevi and Sons,
P.O. Box 10104,
Haifa,
Israel,

This Credit is advised to
you through the Medium of,
Workers Bank, Haifa, Israel.

Dear Sirs,

We hereby open our irrevocable credit No. 110/84 for $406,846.80 (U.S. dollars four hundred and six thousand eight hundred and forty six cents eighty) favouring yourselves.

This credit amount is available, as under, against clean drafts drawn on M/s. Hiram Zeevi and Company (Uganda) Ltd., P.O. Box 719, Kampala:—

1. $40,684.68 payable on 15th April, 1972
2. $40,684.68 " " 15th May, 1972
3. $40,684.68 " " 15th June, 1972

Letter of Credit 110/84.

4.	$40,684.68	"	" 15th July, 1972
5.	$40,684.68	"	" 15th August, 1972
6.	$40,684.68	"	" 15th September, 1972
7.	$40,684.68	"	" 15th October, 1972
8.	$40,684.68	"	" 15th November, 1972
9.	$40,684.68	"	" 15th December, 1972
10.	$40,684.68	"	" 15th January, 1973

Drawings under this credit must be made as above and are payable only on or after the dates shown.

This credit is valid until 31st January, 1973 for presentation of drafts in Kampala.

Special Instructions:— All charges for the handling of this credit and negotiation of drafts thereunder are payable by the opener.

All drafts must be enfaced "Drawn under Grindlays Bank (Uganda) Ltd., Kampala Credit No. 110/84 dated 24th March, 1972."

We guarantee the payment of drafts drawn in conformity with the terms and conditions stated. The negotiating bank must send drafts direct to us by air-mail.

The negotiating bank is authorized to claim reimbursement for their payments on the due dates listed above from First National City Bank, 399 Park Avenue, New York to the debit of our account with them together with a certificate to the effect that all terms of the credit have been complied with and the relative drafts have been airmailed to us.

Yours faithfully,
For Grindlays Bank (Uganda) Ltd.

I. J. MITCHELL
I. J. MITCHELL
pro. Accountant, M.26

J.H.G. HENDRIE
J.H.G. HENDRIE
Manager H.16

Letter of Collection From Chemical Bank to First National City Bank.

CHEMICAL

20 Pine Street, New York, NY 10005
Tel.: (212) 770-2327

Robert C. Schlosser
Assistant Vice President

January 11, 1973

First National City Bank
Foreign Collection Department
111 Wall Street
New York, N. Y.

Gentlemen:

On December 28, 1972 we forwarded you our domestic collection R92049 $406,846.80 for reimbursement under Grindlays Bank (Uganda) Limited, Kampala, Uganda L/C 110/84 and R92049 $203,433.40 for reimbursement under Grindlays Bank, (Uganda) Limited, Kampala, Uganda L/C 110/85.

On December 8, 1972 your Mr. Varecka (telephone 825-5709) informed our Ms. Vigorita that "if you received from Chemical Bank a certificate of compliance that all terms under the letter of credit have been complied with you would honor our collections."

On December 5, 1972 under our FC291413 we forwarded 10 drafts totalling $406,846.80 as required under letter of credit 110/84 issued by Grindlays Bank (Uganda) Limited, Kampala, Uganda directly to them asking them to honor immediately the 8 drafts and to honor the remaining 2 drafts on their maturities. On December 18, 1972 we were informed by cable that payment of these drafts was prohibited by Bank of Uganda and being returned to Chemical Bank.

Letter of Collection From Chemical Bank to First National City Bank.

We also sent on December 15 under our FC291415, 5 drafts totalling $203,423.40, under their letter of credit 110/85. However, these drafts only became due and payable February 15, 1973 monthly through June 15, 1973. Their cable advice informed us they never opened this letter of credit and that Hiram Zeevi & Co., Ltd., was no longer operating in Uganda and that they were returning the drafts by airmail to Chemical Bank. Our domestic collection R92050, sent to you, included a copy of a cable to the Israel Discount Bank, Haifa, stating L/C 110-85 was opened and details would be forwarded by airmail.

Letter From First National City Bank.

FIRST NATIONAL CITY BANK

111 Wall Street, New York, N Y 10015

In Reply Please Quote

January 19, 1973

Chemical Bank
20 Pine Street
New York, New York 10005
Attn: Robert C. Schlosser, AVP

Gentlemen:

We have your domestic collection, delivered to us on January 12, 1973, which we herewith return.

It is our understanding that, in December, 1972, as collection agent for the beneficiary of two letters of credit claimed to have been issued by Grindlays Bank (Uganda) Limited, Kampala, Uganda, you presented to the issuer, in Uganda, drafts drawn pursuant to L/C 110/84 and L/C 110/85. Apparently, the drafts under both credits were returned to you unpaid by the issuer for the reasons that the first letter of credit was cancelled, by order of the Ugandan Government, and notification of cancellation had been given to the beneficiaries, and because the second credit had never been issued.

After this rejection, you recently presented the same collection, under L/C 110/84, to us, with ten drafts, each in the amount of $40,684.68, totalling $406,846.30. Upon receipt of same, we cabled the issuer for instructions, and the issuer confirmed that the credit had been cancelled, in April, 1972. The issuer has also indicated that, in view of its previous return of this collection to you in December, 1972, with the reason written on the face of each bill, it

could not understand your attempt to obtain payment through us.

As you know, we were simply a reimbursing bank in this matter, and have no authority or liability to pay these drafts.

Very truly yours,

(Illegible)
Authorized Signature

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
AUG 6 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. 75-64

GRINDLAYS'S BANK (UGANDA) LIMITED,

Petitioner,

v.

J. ZEEVI AND SONS, LTD., GAD ZEEVI, RIVKA ZEEVI, GALILLA PAGI and ENIA MELZER, copartners doing business as J. ZEEVI & SONS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR RESPONDENTS IN OPPOSITION

HARRY H. LIPSIG,
PAMFIL A. RIPOSANU and
EDMUND B. HENNEFELD,
Counsel for Respondents,
375 Park Avenue,
New York, N.Y. 10022.

August 4, 1975.

TABLE OF CONTENTS

PAGE

Questions Presented 1

Constitutional Provisions, Treaty and Statutes Involved 4

Statement 4

Argument 7

I. The Decision Below is Clearly Correct 8

II. There Is No Conflict of Decision 19

III. There Is No Important Question of Federal Law 19

Conclusion 20

Appendix—

Respondents' Appendix 1—

Letter dated April 17, 1972 addressed to the Manager of the First National City Bank, N.Y.C. 1a

Respondents' Appendix 2—

Letter dated May 5, 1972 addressed to the Manager of The Workers Bank, Haifa, Israel 3a

Other Authorities

Cases: PAGE

Bank of America v. *Whitney Bank*, 261 U.S. 171 (1923) 13
Burt Randolph Sugar and Wrestling, Inc. v. *Curtis Circulation Co.*, 377 F. Supp. 1055 (S.D. N.Y. 1975) 14

Deutsche Bank v. *Humphrey*, 272 U.S. 517 (1926) 18

Erb v. *Banco di Napoli*, 243 N.Y. 45 (1926) 14

Fuentes v. *Shevin*, 407 U.S. 67 (1972) 14

Gonzalez v. *Industrial Bank (of Cuba)*, 12 N Y 2d 33, 38 (1962) 17, 19

Hanson v. *Denckla*, 357 U.S. 235 (1958) 6n, 13
Harris v. *Balk*, 198 U.S. 215 (1905) 13
Hibernia Nat. Bank v. *Lacombe*, 84 N.Y. 367 11
Home Insurance Co. v. *Dick*, 281 U.S. 397 (1930) 18

International Shoe Co. v. *Washington*, 326 U.S. 310 (1945) 13

Lauritzen v. *Larsen*, 345 U.S. 571 (1953) 18
Louisville and Nashville Railroad v. *Deer*, 200 U.S. 176 (1906) 13

McGee v. *International Life Ins. Co.*, 355 U.S. 220 (1957) 13

North Georgia Finishing, Inc. v. *Di-Chem, Inc.*, No. 73-1121 (1975) 14

Oetjen v. *Central Leather Co.*, 246 U.S. 297 (1918) 18

PAGE

Pennington v. *Fourth National Bank*, 243 U.S. 269, 271, 272 (1917) 13, 14, 17
Pennoyer v. *Neff*, 95 U.S. 714 (1877) 13

Security Bank v. *California*, 263 U.S. 282, 285, 287 (1923) 13, 17
Simonson v. *International Bank*, 14 N.Y. 2d 281, 285 (1964) 9, 10

Underhill v. *Hernandez*, 168 U.S. 250 (1897) 16
United States v. *Belmont*, 301 U.S. 324 (1937) 17
United States v. *Pink*, 315 U.S. 203 (1942) 17

Rules and Statutes:
Business Corporation Law:

§1314(b) 2n, 9, 10

Bretton Woods Agreement, 60 Stat. 1401 et seq., specifically Article VIII, Sections 2(a), 2(b), 3 3, 14, 15, 16

New York Civil Practice Law and Rules Article 62:

Section 6201 ..... 8, 17

Section 6202 8

Section 6213 8

New York Banking Law:

§200-b(2), subd. (a)(c) and (d) 2, 9, 10, 11, 12

New York General Corporation Law, Section 225 9

IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. 75-64

GRINDLAYS'S BANK (UGANDA) LIMITED,

Petitioner,

v.

J. ZEEVI AND SONS, LTD., GAD ZEEVI, RIVKA ZEEVI, GALILLA PAGI and ENIA MELZER, copartners doing business as J. ZEEVI & SONS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR RESPONDENTS IN OPPOSITION

Questions Presented

Respondents disagree with petitioner's statement of the questions sought to be presented. Respondents' difference arises from the fact that the petition, in purporting to state the questions presented, assumes by implication, and in some instances affirms outright, facts which the record does not support. An additional difference is that the petition purports to raise a number of questions beyond those raised and determined in the state courts.

Respondents submit the following as a true statement of the questions presented:

1. On the threshold issue raised by petitioner of subject-matter jurisdiction in the state court, that jurisdiction at bar derives from New York Banking Law §200-b(2), subd. (a)(c) and (d).* Banking Law §200-b(2) authorizes an action to be maintained in the state courts against a foreign banking corporation by another foreign corporation or a nonresident, in the following specified cases among others: (1) where the contract sued upon was "to be performed" within the state; (2) where the cause of action "arose" within the state; or (3) where the action "is based on a liability for acts done" within the state by the defendant foreign banking corporation. Any one of these enumerated grounds for subject-matter jurisdiction is alone sufficient.

The New York Court of Appeals in the present case held squarely that the cause of action sued upon "arose" within the State of New York. It further found that the provision of the contract of irrevocable letter of credit sued upon called for performance by reimbursement in New York, as "an integral part of that for which the parties bargained", and not as a "discrete obligation". It similarly found that the liability sued upon was for acts done within the state by the petitioner foreign banking corporation. These were all questions having to do with the correct interpretation as a matter of state law of the state statutes before the court, as to which questions the highest state court's determinations based on those statutes would be final and conclusive. The only contentions that might then survive the holdings by the New York Court of Appeals with respect to those state law matters was petitioner's claim, if

* Also, from Business Corporation Law, §1314(b), similarly worded.

properly advanced, that the state statutes in question violated the provisions of the United States Constitution, specifically, the Due Process clause of the Fourteenth Amendment. Assuming that that issue had been properly raised in the state courts, that would be the narrow scope of the question of subject-matter jurisdiction that might then be raised in this Court.

2. The New York Court of Appeals, faced with the threshold question of "choice of law" as the basis for its decision on the merits, chose the New York law over the Uganda law as the law that "should be accorded paramount control over the legal issues presented." Though petitioner seeks to cite that as a question presented for possible review by this Court, respondents submit that that is purely a question of state and not of federal law.

3. The New York Court of Appeals held that enforcement of the letter of credit contract in suit did not in any way violate the Bretton Woods Agreement, 60 Stat. 1401 et seq., specifically Article VIII, Section 2(b) thereof. The question presented is whether on the facts at bar this determination was correct.

4. The New York Court of Appeals ruled that the act of state doctrine invoked by petitioner did not apply on the facts of this case, since here the debt attached was "located" in the territorial limits of the State of New York, and not within the territorial limits of the Country of Uganda. The question is whether this determination by the Court of Appeals was correct, since decision under the act of state doctrine turns precisely on the question whether the property which will be affected by the judgment is within the territory of the foreign government or within the territorial limits of the forum state.

Constitutional Provisions, Treaty and Statutes Involved

Respondents do not differ with petitioner as to the Constitutional Provisions, Treaty and Statutes involved, except that it may be doubted that petitioner, before the state courts or even in the present petition, has raised any question of the supposed unconstitutionality of the cited provisions of the New York Banking Law or Business Corporation Law as enacted or applied.

Statement

Respondents disagree with the statements of the case contained in the petition. Respondents submit that the following is a correct statement of the facts as they appear in the record:

On March 24, 1972, Hiram Zeevi & Company (Uganda) Ltd., an Israeli corporation, deposited with Grindlays Bank (Uganda) Ltd., local currency valued at approximately $406,846.80 (R. 109),* for the purpose of establishing a fund upon which respondent, J. Zeevi and Sons, an Israeli copartnership, could draw money (R. 110). On the same date, respondent opened its irrevocable credit No. 110/84 for $406,846.80 in favor of that copartnership and issued a letter of credit acknowledging that it had opened the irrevocable credit for "$406,846.80 (U.S. dollars four hundred and six thousand eight hundred and forty-six, cents eighty)" (A29), and providing that the credit amount be

* Numbers in parentheses prefixed by the letter "A" refer to pages of the appendix to the petition. Numbers in parentheses prefixed by the designation "Resp. App." refer to pages of the appendix to this brief in opposition. Numbers in parentheses prefixed by the letter "R." refer to pages of the printed record in the state court.

available against clean drafts drawn on the depositor in equal amounts of $40,684.68 commencing April 15, 1972, and monthly thereafter (*ibid*). The letter of credit concluded with these provisions (A30):

> "We guarantee the payment of drafts drawn in conformity with the terms and conditions stated. * * *
>
> The negotiating bank is authorized to claim reimbursement for their payments on the due dates listed above from First National City Bank, 399 Park Avenue, New York to the debit of our account with them together with a certificate to the effect that all terms of the credit have been complied with and the relative drafts have been air-mailed to us."

On April 4, 1972, petitioner advised its New York agent, First National City Bank, above referred to, of the issuance of the letter of credit numbered 110/84 (R. 167).

Thereafter, on April 14, 1972, by cable dated and received April 14, 1972, and confirmatory letter dated April 17, 1972, petitioner advised its New York agent, the First National City Bank, that the Government of Uganda had instructed it to "cancel" the letter of credit "No. 110/84 dated 24-3-1972 favouring J. Zeevi & Sons Haifa Israel for US 406846-80", and directed the First National City Bank "not to effect payment of drawing thereunder" (Resp. App. 1).

A letter dated May 5, 1972 from petitioner stated (Resp. App. 2):

> "In the circumstances we have had no option but to instruct our agents in New York not to effect reimbursement of the drawing due to be made on 15.5.1972 without further reference to us."

On December 28, 1972, Chemical Bank presented to the First National City Bank for reimbursement ten drafts each for $40,684.68 totalling $406,846.80 drawn under letter of credit 110/84, and on January 11, 1973, Chemical wrote to the First National City Bank that "we are again presenting our domestic collection R92049 in the amount of $406,846.80 under irrevocable credit 110/84, reimbursable on your good selves * * * as per the terms and conditions thereof." (R. 56). On January 19, 1973, the First National City Bank returned the subject drafts unpaid to Chemical (R. 58).

The present action by the copartnership, the beneficiary of letter of credit 110/84, and by J. Zeevi and Sons, Ltd., the assignee of that partnership, was commenced by an order of attachment issued out of the Supreme Court, New York County, on November 24, 1972, service of a copy of that order on the First National City Bank in New York City as garnishee, and levy pursuant to the order made by the New York City Sheriff upon funds of petitioner on deposit with the First National City Bank (R. 1). The obtaining thereby of *in rem* or *quasi in rem** jurisdiction against petitioner was completed by service by publication of a copy of the summons and complaint in the action upon petitioner pursuant to order of the Court issued for such service by publication.

Petitioner thereafter moved to dismiss the complaint for claimed lack of subject-matter jurisdiction (R. 7-13). On that motion, petitioner raised no question as to the legal sufficiency of the levy of attachment itself, which constituted the basis for the underlying *in rem* jurisdic-

---

* We shall follow the practice indicated by this Court in *Hanson* v. *Denckla*, 357 U.S. 235 (1958), footnote p. 246, and for "convenience of terminology" use "*in rem*" in lieu of "*in rem*" and "*quasi in rem.*"

tion, and no question as to the legal sufficiency of the service by publication made pursuant to order of the Court issued therefor. Therefore, these questions as to the legal sufficiency, as such, either of the levy under the order of attachment, or the subsequent service of process by publication, must be deemed outside the scope of the present petition.*

The motion to dismiss for supposed lack of subject-matter jurisdiction was duly denied by the New York County Trial Term, and that denial thereafter on June 21, 1973, duly affirmed by the Appellate Division, First Judicial Department, and subsequently by the New York Court of Appeals (A15-A17, R. 195-196, A1-A9).

Thereafter, the Supreme Court, New York County, granted on motion of plaintiff J. Zeevi and Sons, Ltd. partial summary judgment on the first cause of action in the complaint (that based on irrevocable letter of credit 110/84), and directed entry of judgment in favor of that plaintiff. The Appellate Division of the Supreme Court unanimously affirmed, and on subsequent appeal, the New York Court of Appeals likewise unanimously affirmed (A1-A12).

Argument

The decision below is clearly correct.

The federal questions surviving the determination of the New York Court of Appeals are few in number and most narrow in scope. None involve a decision by the state courts determining a federal question of substance not heretofore decided by this Court. None involve a decision by the state courts in any way at odds with

* Notwithstanding, those questions will be treated in this brief in opposition. See, pp. 13-14, *infra*.

applicable decisions of this Court. All present issues of law already fully and conclusively adjudicated by this Court and not warranting from any standpoint, whether of public or private importance, review by this Court on certiorari.

I.

The Decision Below is Clearly Correct.

A.

Petitioner contends in its petition as a threshold question that the complaint should have been dismissed by the state court for lack of subject-matter jurisdiction (Pet. 3, 12-16). But this, as shall be shown, was solely a question of state law and not of federal law.

New York Civil Practice Law and Rules provides in Article 62, Sections 6201 *et seq.*, for attachment of a foreign corporation's property within the territorial limits of the state as a basis for obtaining jurisdiction over that foreign corporation *in rem* (CPLR 6201). Section 6202 specifies a "debt" as a form of property that may be so attached. Section 6213 provides for completion of the *in rem* jurisdiction by service by publication upon the defendant foreign corporation pursuant to an order of the court obtained therefor.

At bar, all the foregoing was duly accomplished, and at no stage of this litigation in the state courts did petitioner raise any question as to the legal sufficiency of the steps taken by respondents to obtain such *in rem* jurisdiction in the manner provided for in the state statutes.

However, the State of New York, acting through its legislature, has chosen to limit itself in the matter of the jurisdiction it will exercise where a litigation involves a defendant foreign banking corporation or foreign non-

banking corporation sued by another foreign corporation or a nonresident person. Thus, Subdivision 2 of section 200-b of the Banking Law, entitled "**Actions maintained against foreign banking corporation; residents; foreign corporations, foreign banking corporations as nonresidents,**" provides in part:

> "2. Except as otherwise provided in this chapter, an action * * * against a foreign banking corporation may be maintained by another foreign corporation or foreign banking corporation or by a nonresident in the following cases only:
>
> (a) where the action is brought to recover damages for the breach of a contract * * * to be performed within this state * * *;
>
> * * * * *
>
> (c) where the cause of action arose within this state;
>
> (d) where the action * * * is based on a liability for acts done within this state by a foreign banking corporation; * * *."

Subdivision (b) of section 1314 of the Business Corporation Law contains almost identical language. (Business Corporation Law §1314(b), in turn, was derived from New York General Corporation Law, Section 225, having substantially similar provisions.)

It is to be noted that Banking Law §200-(b)(2) and Business Corporation Law §1314(b) do not come into operation unless and until jurisdiction sufficient to satisfy due process requirements already exists, either *in personam* or *in rem*. (See, on this precise point, *Simonson* v. *International Bank*, 14 N.Y. 2d 281, 285 (1964), where the underlying jurisdiction was lacking either *in personam* or *in rem*.) Then, even where due process jurisdiction exists,

the state sovereignty, acting through its state courts in interpretation of the two statutes involving suits against foreign corporations above referred to, decides whether or not it will entertain the litigation in its courts. This, however, is a matter of self-imposed restraint and self-limitation, reflecting solely New York State's own policy "against lending its courts to the resolution of disputes between non-resident parties", except as provided in the statute (*Simonson* v. *International Bank*, 14 N.Y. 2d 281 [1964], at p. 285). It is thus not in the least a question of federal constitutional law, whether arising under the federal Due Process clause or any other.

When, therefore, in the case at bar, the New York Court of Appeals, interpreting Banking Law §200-b(2) and Business Corporation Law §1314(b), held that the facts established a cause of action arising within the state, and that on that basis the action would be permitted to be maintained, it was deciding a question solely of state law and not at all a question of federal law, specifically, not a question arising under the federal Due Process clause.

Before the state courts, petitioner had argued merely that respondent did not bring its suit within the provisions of Banking Law §200-b(2) (a)(c) and (d) and Business Corporation Law §1314(b), contending (a) that the "alleged cause of action did not arise in New York", (b) that the contract of guarantee "was not to be performed in New York", (c) that the First National City Bank account "was not designated as the source of payment to plaintiff", and (d) that it was "not true" that the claim in suit was "predicated on a liability for acts done within this state" by petitioner (Pet. Reply Brief in New York Court of Appeals, pp. 2-5). The New York Court of Appeals overruled all these contentions, however, holding as had the Appellate Division and Trial Court previously, that the facts of the case established a cause of action "occurring

within New York" within the meaning of the above-quoted Banking Law Section 200-b(2)(c) (A5). Thus, on this precise point the Court of Appeals found that in irrevocable credit 110/84,

> "defendant contracted to pay upon compliance with its terms (*Lamborn* v. *National Park Bank of New York, supra,* at p. 525) and defendant's order countermanding payment by cable and letter took effect upon receipt by Citibank in New York and then gave rise to a cause of action here (*Gonzalez* v. *Industrial Bank (of Cuba),* 12 N Y 2d 33, 38). Citing *Hibernia Nat. Bank* v. *Lacombe* (84 N.Y. 367), this court stated in *Gonzalez* that 'a cause of action arises where that is done which should not be done.' In this instance, New York was the locus of repudiation, whereas it should have been a site of payment."

This ruling was, of course, fully supported by the record (see, pages 4-6, *supra*).

Overruling petitioner's contention made before it that the provision respecting reimbursement by the First National City Bank in New York was a wholly separate, "gratuitous" and inessential part of the irrevocable letter of credit, the Court of Appeals stated (A5-A6):

> "The provision respecting reimbursement in New York was an integral part of that for which the parties bargained, it was not a discrete obligation. The separate character of defendant's undertakings is negated by its guarantee of payment of drafts. The value to those in commerce of having a place at a financial capital where funds can be obtained on a simple letter of credit, away from a relatively small bank in an undeveloped country of uncertain political stability, is

obvious. The reimbursement provision is quite essential, economically, to the total arrangement since a promisee would be unwilling to present a draft based on a letter of credit, in dollar terms, to a commercial house in the United States and then be required to wait a relatively inordinate time for the money to come from a remote source."

In another portion of its opinion, the Court stated (A6-A7):

> "New York * * * is a financial capital of the world, serving as an international clearinghouse and market place for a plethora of international transactions, such as to be so recognized by our decisional law (*Intercontinental Planning* v. *Daystrom, supra,* at pp. 383-384). A vast amount of international letter of credit business is cusomarily handled by certain New York banks whose facilities and foreign connections are particularly adaptable to this field of operation (34 N Y Jur., Letters of Credit, §10, p. 427). The parties, by listing United States dollars as the form of payment, impliedly accepted these facts and set up procedures to implement their trust in our policies. In order to maintain its preeminent financial position, it is important that the justified expectations of the parties to the contract be protected * * *."

Further, on the question arising under Banking Law §200-b(2)(c) as to where the cause of action "arose", the Court of Appeals stated (A6):

> "When defendant, the issuer, repudiated the letter of credit before presentment of the draft and before expiration of the letter, it was guilty of an anticipatory breach of contract and became liable for damages

caused the beneficiary (*Foglino & Co.* v. *Webster,* 217 App. Div. 282, 297-298, mod. on other grounds, 244 N.Y. 516; *Doelger* v. *Battery Park National Bank,* 201 App. Div. 515, 521-522; *Mendelson* v. *Wechsler,* 203 N.Y.S. 197; 34 N Y Jur., Letter of Credit, §38; see Uniform Commercial Code, §5-115)."

Such repudiation took place when petitioner notified First National City Bank, its "agent" in New York City to effect reimbursement, not to make payments on the drafts as it had previously been "advised" to do (R. 167).

The foregoing disposes of all of the following cases cited by petitioner (pp. 13-16), each and every one of which involved claimed violation of the Due Process clause based on the failure, or claimed failure, to obtain the necessary underlying jurisdiction either *in personam* or *in rem*: *Hanson* v. *Denckla,* 357 U.S. 235 (1958); *McGee* v. *International Life Ins. Co.,* 355 U.S. 220 (1957); *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945); *Bank of America* v. *Whitney Bank,* 261 U.S. 171 (1923); *Harris* v. *Balk,* 198 U.S. 215 (1905). Those cases, classic jurisdiction controversies arising under the Due Process clause, cannot be the least authority in the present situation where the basic due process jurisdiction, *in rem* in character, has indisputably been obtained in the time-honored and case-sanctioned manner through attachment upon defendant's property situated within the territorial limits of the forum state, followed by service of process by publication in the manner provided for by statute. *Pennoyer* v. *Neff,* 95 U.S. 714 (1877); *Harris* v. *Balk,* 198 U.S. 215 (1905); *Louisville and Nashville Railroad* v. *Deer,* 200 U.S. 176 (1906); *Pennington* v. *Fourth National Bank,* 243 U.S. 269, 271, 272 (1917); *Security Bank* v. *California,* 263 U.S. 282, 285, 287 (1923). As pointed out in the *Pennington* case, *supra,*

moreover, bank accounts are precisely "the species of property which courts of the several States have most frequently applied in satisfaction of the obligations of absent debtors." (243 U.S. at p. 271).

Erb v. *Banco di Napoli*, 243 N.Y. 45 (1926), cited by petitioner (p. 15), has, of course, no relevance whatever since the present suit is against petitioner and not against the First National City Bank, which as depositary bank is the analogue of the Banco di Napoli in the *Erb* case. The present case is against petitioner alone, the First National City Bank's sole connection being that it is the debtor of petitioner with respect to the debt (bank deposit) locally attached to obtain the basis for an *in rem* jurisdiction.

Petitioner has also cited *Fuentes* v. *Shevin*, 407 U.S. 67 (1972), *North Georgia Finishing, Inc.* v. *Di-Chem, Inc.*, No. 73-1121 (1975), not officially reported, and *Burt Randolph Sugar and Wrestling, Inc.* v. *Curtis Circulation Co.*, 377 F. Supp. 1055 (S.D. N.Y. 1975), but all three of those cases involved attacks on the respective attachment and replevin statutes. At bar, at no time has petitioner attacked in the New York courts the New York attachment statute under which levy and attachment of property consisting of a debt was effected in order to constitute a basis for *in rem* jurisdiction. Petitioner's sole attack in the New York courts has been on "subject-matter jurisdiction" (R. 7-13), specifically, that aspect of it that arises when the state court, construing the pertinent state statute, applies the state's own policy regarding lending its courts to the determination of disputes between nonresident parties.

B.

On the question whether the decision by the New York Court of Appeals in any way contravened the Bretton

Woods Agreement, 60 Stat. 1401 *et seq.* (thus giving rise to a question under the Federal Supremacy Clause), it is evident that it does not.

The Bretton Woods Agreement (60 Stat. 1401 *et seq.*) provides in relevant part under Section 2(b) of Article VIII:

> "Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member."

The New York Court of Appeals correctly ruled that the within irrevocable letter of credit, even when read in its broadest sense, did not fall within the scope of the above-quoted provision, the one solely relied upon by petitioner, for the reason that the letter of credit was "not an exchange contract." (A9).

This conclusion is fortified by the fact that at the time the letter of credit was issued, every legal requirement of Uganda then in force had necessarily been complied with and the document was proper and valid in every regard. Significantly, ten days after the March 24, 1972 issuance, and on April 4, 1972, petitioner itself advised the First National City Bank in New York City that the letter of credit had been properly issued in favor of respondent Zeevi (R. 167). Such advice, so given on that date, necessarily meant that the letter of credit had been in all respects validly issued and was valid as of such April 4th date, and was hence to be complied with as a valid obligation then outstanding. After that, the irrevocable letter of credit, legal under the laws of Uganda on the date issued, had to be "cancelled" (Resp. App. 1). Such cancellation did not, in fact, take place until April 17, 1972, or at the earliest April 14, 1972 (Resp. App. 2).

Unless the irrevocable letter of credit was lawful when issued (under the Bretton Woods Agreement, or any other treaty or statutory requirement), petitioner would have been perpetrating the grossest kind of fraud on respondents, taking Hiram's Sh. 3,000,000 and giving in return a tainted, and therefore actually nonexistent and wholly worthless "irrevocable" credit.

The record shows that Bretton Woods was not referred to in any of the correspondence preceding suit as a ground for cancellation (R. 68, 150-153, 167, 174). Bretton Woods itself specifically prohibits "discriminatory currency arrangements or * * * practices." (60 Stat. 1411, Sect. 3; see, also, *ibid*, §§2(a) and 2(b). At bar, the attempted action of President Amin, directed solely at Israel and Israeli nationals (for anti-Semitic motives which the record abundantly makes clear—R. 38-41), is nothing if not discriminatory. It is astonishing that petitioner should be claiming that the within acts taken by the Uganda Government were "imposed consistently with" and are within the protection of the Bretton Woods Agreement, an agreement designed and adopted precisely to bar discriminatory practices.

C.

Petitioner contends that the decision of the New York Court of Appeals was contrary to the thoroughly accepted act of state doctrine as enunciated in numerous decisions of this Court.

There is no dispute or controversy as to the scope of that doctrine, it having been early and authoritatively enunciated in *Underhill* v. *Hernandez*, 168 U.S. 250 (1897), as follows:

> "Every sovereign State is bound to respect the independence of every other sovereign State, and the courts

of one country will not sit on judgment on acts of the government of another one within its own territory." (FULLER, *Ch. J.*, 168 U.S. at page 252).

The doctrine is not applicable here because this case involves the debt owing by the First National City Bank to petitioner, the attachment of which debt provided the basis for *in rem* jurisdiction exercised by the New York courts under the state statute, CPLR §§6201 *et seq.*, for such cases made and provided. That debt is "located" within the territorial limits of the State of New York, and not within the territorial limits of the country of Uganda, since New York, and not Uganda, alone has the power to enforce and collect it. *Security Bank* v. *California*, *supra*, 263 U.S. 282, 285 (1923); *Pennington* v. *Fourth National Bank*, *supra*, 243 U.S. 269 (1917). Conclusive on the point that New York has such power, is that in accordance with the New York statute covering such matters, the debt has been actually attached in New York and is presently *in custodia legis* in the State of New York awaiting the ultimate disposition of this case.

Petitioner cites *United States* v. *Pink*, 315 U.S. 203 (1942) and *United States* v. *Belmont*, 301 U.S. 324 (1937), but those cases are wholly distinguishable, being instances of actual conflict between federal and state policy where the federal government in the proper conduct of its foreign relations has specifically adopted a public policy vis-a-vis a foreign government with which federal policy the purported state policy is in conflict. Concerning any supposed federal policy intimated by petitioner, what the New York Court of Appeals stated in the wholly opposite case of *Gonzalez* v. *Industrial Bank (of Cuba)*, *supra*, 12 N.Y. 2d 33 (1962), is fully applicable (*Per Curiam*, p. 39): "There being no present policy of the executive branch of the United States Government requiring acquiescence in the

confiscatory acts of the Cuban Government, the well-known policy of this State against such acquiescence is operative."

Petitioner cites in its petition (pp. 20-21) *Lauritzen* v. *Larsen*, 345 U.S. 571 (1953), and *Home Insurance Co.* v. *Dick*, 281 U.S. 397 (1930), *Deutsche Bank* v. *Humphrey*, 272 U.S. 517 (1926), and *Oetjen* v. *Central Leather Co.*, 246 U.S. 297 (1918), but these cases are all so clearly inapplicable as not to require comment.

D.

Petitioner contends that the choice by the New York Court of Appeals of the New York Law over the Uganda Law in determining the merits of the case violates the federal law, specifically, the Due Process clause of the Fourteenth Amendment.

It is submitted, however, that as has already been indicated (page 3, *supra*), the correct choice of law by the forum state is not at all, and never has been, a question arising under the federal constitution, Due Process clause or any other. The considerations of state law the Court of Appeals had in mind in choosing the New York Law over the Uganda Law in arriving at its decision on the merits, are well stated in its opinion, as follows (A6):

> "We come now to the question of the choice of law. '[T]he rule which has evolved clearly in our most recent decisions is that the law of the jurisdiction having the greatest interest in the litigation will be applied and that the facts or contacts which obtain significance in defining State interests are those which relate to the purpose of the particular law in conflict' (*International Planning* v. *Daystrom*, 24 N.Y. 2d 372, 382). New York has an overriding and paramount interest in the outcome of this litigation. * * * Since New York

has the greatest interest and is most intimately concerned with the outcome of this litigation, its laws should be accorded paramount control over the legal issues presented (cf. *Auten* v. *Auten*, 308 N.Y. 155, 161)."

II.

There Is No Conflict of Decision.

Petitioner has failed totally to point to any such conflict, or supposed conflict, of decision.

III.

There Is No Important Question of Federal Law.

The few, if any, questions of federal law that have survived the New York Court of Appeals' determination have been repeatedly settled by decisions of this Court in a manner to leave their answers in no doubt, and entirely opposed to petitioner's present contentions.

The facts themselves are sufficiently unique and special as to present a situation not likely to recur, at least in any form of federal question. The case of *Gonzalez* v. *Industrial Bank (of Cuba)*, *supra*, 12 N Y 2d 33 (1962), shows amply that such situations, should they recur, are fully disposable in accordance with the applicable state law, and not at all drawing in a federal question of any reality or substance.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

HARRY H. LIPSIG,
PAMFIL A. RIPOSANU and
EDMUND B. HENNEFELD,
Counsel for Respondents,
375 Park Avenue,
New York, N.Y. 10022.

August 4, 1975.

Respondents' Appendix 1

[EMBLEM]

GRINDLAYS BANK
(UGANDA)
LIMITED
(INCORPORATED IN UGANDA)

45 KAMPALA ROAD
P. O. BOX 7131
KAMPALA, UGANDA

TELEGRAMS NATIONAL KAMPALA
TELEX 61018
TELEPHONE 59011

MANAGER'S OFFICE

17th April, 1972

PRIVATE AND CONFIDENTIAL

The Manager,
First National City Bank.,
399 Park Avenue.,
NEW YORK.

Dear Sir,

Our Letter of Credit No. 110/84 dated 24.3.1972 for U.S. $406846-80 favouring J. Zeevi & Sons Haifa, Israel, advised through Workers Bank, Haifa, Israel.

We confirm our telex messages dated 14th April, 1972 read as under:—

"GOVERNMENT OF UGANDA HAVE INSTRUCTED US TO CANCEL OUR LETTER OF CREDIT NO. 110/84 DATED 24-3-1972 FAVOURING J. ZEEVI & SONS HAIFA ISRAEL FOR US $406846-80 ESTABLISHED THROUGH WORKERS BANK

Respondents' Appendix 1

HAIFA ISRAEL (STOP) DO NOT REPEAT DO NOT EFFECT PAYMENT AGAINST DRAWING US $40684-68 DUE TO BE PAID ON OR AFTER 15TH APRIL 1972 LETTER FOLLOWS"

"OUR TELEGRAM OF DATE REFERRING TO CANCELLATION LETTER OF CREDIT NO. 110/84 US $406846-80 ADD TESTWORD 23472 (STOP) REFERENCE OUR INSTRUCTIONS NOT TO EFFECT PAYMENT OF DRAWING THEREUNDER PLEASE ADD WORDS QUOTE WITHOUT REFERENCE TO US FOR FURTHER INSTRUCTIONS UNQUOTE"

Following the expulsion of all Israeli Nationals from Uganda, the Bank of Uganda, on instructions from the Uganda Government, have cancelled all existing permits for purchase of Foreign Currency by Israeli Companies which includes their approval for remittances under Letters of Credit already opened by us. These instructions have since been confirmed by the Minister of Finance.

In the circumstances we have had no alternative but to instruct you not to reimburse drawings under the above Letters of Credit but we are making effort to persuade Government to permit us to honour commitments entered into in good faith by this Bank.

We have arranged to discuss this matter with the Minister of Finance and will advise you of the outcome.

Yours faithfully,

/s/ J.H.G. HENDRIE
MANAGER
(J.H.G. HENDRIE.)

Respondents' Appendix 2

[EMBLEM]

GRINDLAYS BANK
(UGANDA)
LIMITED
(INCORPORATED IN UGANDA)

45 KAMPALA ROAD
P. O. BOX 7131
KAMPALA, UGANDA

TELEGRAMS NATIONAL KAMPALA
TELEX 61018
TELEPHONE 59011

MANAGER'S OFFICE

5th May, 1972

PRIVATE AND CONFIDENTIAL

The Manager,
The Workers Bank.,
HAIFA.,
ISRAEL.

Dear Sir,

Our Letter of Credit No. 110/84 dated 24.3.1972 for U.S. $406846-80 favouring J. Zeevi & Sons, Haifa, Israel.

We refer to our letter of the 17th April, 1972 and regret to advise that we are still precluded by the Government of Uganda, from making any payments under our above Letter of Credit.

Representations have been made by us to the Ministry of Finance and to the Bank of Uganda and we are advised that the matter is still under consideration.

Respondents' Appendix 2

In the circumstances we have had no option but to instruct our agents in New York not to effect reimbursement of the drawing due to be made on 15.5.1972 without further reference to us.

Yours faithfully,

/s/ J.H.G. HENDRIE
MANAGER
(J.H.G. HENDRIE.)

c.c.

Messrs. J. Zeevi & Sons.,
P. O. Box 10104,
HAIFA.,
ISRAEL.

SUPREME COURT, U. S.

FILED

SEP 17 1975

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. 75-64

GRINDLAYS BANK (UGANDA) LIMITED,
Petitioner,

v.

J. ZEEVI AND SONS, LTD., GAD ZEEVI, RIVKA ZEEVI, GALILLA PAGI and ENIA MELZNER, copartners doing business as J. ZEEVI & SONS,
Respondents.

REPLY BRIEF OF PETITIONER

HENRY HARFIELD
Attorney for Petitioner
53 Wall Street
New York, N. Y. 10005

SHEARMAN & STERLING
HERMAN E. COMPTER
JOHN J. E. MARKHAM, II
of Counsel

September 16, 1975.

IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. 75-64

GRINDLAYS BANK (UGANDA) LIMITED,
Petitioner,

v.

J. ZEEVI AND SONS, LTD., GAD ZEEVI, RIVKA ZEEVI, GALILLA PAGI and ENIA MELZNER, copartners doing business as J. ZEEVI & SONS,
Respondents.

REPLY BRIEF OF PETITIONER

The Brief for Respondent amounts to a concession that the case requires review by this Court.

A. Respondent concedes the existence of federal questions (Resp. Br. p. 7), but argues that the federal questions "surviving the determination by the New York Court of Appeals are few in number and most narrow in scope." That argument supports the petition for certiorari for the following reasons.

1. Federal questions, by definition, survive "determination" by a state court. This case squarely and inescapably raises questions as to whether New York, under our federal system, has jurisdiction (1) to entertain this controversy between alien non-residents and (2) to adjudicate the controversy on the basis of New York substantive law, rather than on other bases such as Ugandan law, the act

of state doctrine and the Bretton Woods Agreement. Those questions must be answered by this Court, not by the unilateral dictate of the state court whose authority is questioned. *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964) at page 425.

2. The right and duty of this Court to examine and answer federal questions is not affected by the number of federal questions raised in a case, nor by the narrowness or breadth of the questions. Only this Court can answer federal questions, whether few or many, that are raised by the decision of a state court and only this Court can determine whether the scope of those questions is broad or narrow. Petitioner seeks review by this Court of the way in which a state court has answered federal questions. That review should not be denied on the basis of respondent's assertion that the federal questions are few in number and narrow in scope.

B. The issue now before this Court is whether or not a writ of certiorari should issue to search the record and to determine whether the judgment of the New York Court was correct or erroneous. It is quite beside the point, therefore, for respondents to argue that the decision below was "clearly correct" or to denigrate the importance of the federal questions, whose existence is undisputed.

We respectfully submit that, on the facts and law presented in the petition for certiorari, there is a high probability that this Court will find that the decision below is unsupported by the record and erroneous in law. Respondents have understandably sought, in their Brief in Opposition to the Petition for Certiorari, to present a contrary view. The issue presented by this conflict as to how the federal questions should be answered must be resolved by this Court, and should be resolved, we submit, after full briefing, argument and consideration, not only of the narrow questions in this case, but of their relation to relevant questions now pending before this Court. See, *inter alia*,

Burt Randolf Sugar and Wrestling, Inc. v. *Curtis Circulation Co.*, 383 F. Supp. 643 (S.D.N.Y. 1974) appeal pending; *Menendez* v. *Saks & Co.*, 485 F.2d 1355 (2d Cir. 1973) appeal pending, and *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964) at 425.

Issuance of the writ should not be frustrated by the *ipse dixit* of the state court whose judgment, explicitly passing on federal questions, is sought to be reviewed; still less by the efforts of respondents to prevent consideration by this Court of important federal questions that deserve answers.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: New York, New York, September 16, 1975.

Respectfully submitted,

HENRY HARFIELD
Attorney for Petitioner
53 Wall Street
New York, New York 10005

SHEARMAN & STERLING
HERMAN E. COMPTER
JOHN J. E. MARKHAM, II
of Counsel